

No. 17070

United States
Court of Appeals
for the Ninth Circuit

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Appellant,

vs.

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation, et al.,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 312)

FILED

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FRANK H. SCHMID, CLERK

Appeal from the United States District Court
for the District of Oregon.

No. 17070

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court
for the District of Oregon

Civil No. 9997

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation,

Libelant,

vs.

THE S. S. ROBERT LUCKENBACH, Her En-
gines, Tackle, Apparel and Furniture, LUCK-
ENBACH STEAMSHIP COMPANY, INC., a
Delaware Corporation, and ALBINA ENGINE
& MACHINE WORKS, INC., an Oregon Cor-
poration,

Respondents.

LIBEL IN REM AND IN PERSONAM
FOR CARGO DAMAGE

To the Honorable Claude McColloch, Gus J. Solo-
mon and William G. East, Judges, of the
Above-Entitled court:

The libel of Hershey Chocolate Corporation in a
cause for cargo damage, civil and maritime, against
the S. S. Robert Luckenbach, her engines, tackle,
apparel and furniture, Luckenbach Steamship Com-
pany, Inc., a Delaware corporation, and Albina
Engine & Machine Works, Inc., an Oregon corpo-
ration, alleges:

Article I.

Libelant is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

Article II.

The S. S. Robert Luckenbach is an ocean-going cargo vessel Registry No. 245923, with gross tonnage of 7,882 tons.

Article III.

Luckenbach Steamship Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the owner of the S. S. Robert Luckenbach.

Article IV.

Albina Engine & Machine Works, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon.

Article V.

On or about the 26th day of February, 1958, certain cargo owned by Hershey Chocolate Corporation consisting of confectionery cocoa and chocolate syrup and consigned to itself at Portland, Oregon, then in good order and condition, was delivered to Luckenbach Steamship Company, Inc., at Philadelphia, Pennsylvania, and loaded aboard said vessel to be transported within a reasonable period of time, in like good order and condition, to Portland, Oregon, in consideration of agreed freight and in ac-

cordance with the terms and conditions of the bill of lading then and there issued by Luckenbach Steamship Company, Inc., to Hershey Chocolate Corporation.

Article VI.

Thereafter said vessel, having on board the above-described cargo, departed for Portland, Oregon, said voyage being designated as Voyage L-910. On April 2, 1958, while in port in Portland, Oregon, the said vessel was undergoing minor repairs performed and to be performed by respondent, Albina Engine & Machine Works, Inc.

Article VII.

On said date and as a proximate result of the many faults and the negligence of respondents, and each of them, concurring and combining, and of the personal failures and the negligence of the owner of the vessel, to the knowledge and privity of said owner, a fire occurred aboard said vessel causing as a direct and natural consequence thereof, damage to said cargo.

Respondent, Luckenbach Steamship Company, Inc., in breach of the terms of its shipping contract, failed to transport said cargo and to deliver the same at the port of destination, or elsewhere, in like good order and condition.

Article VIII.

Respondent, Luckenbach Steamship Company, Inc., failed to make said vessel tight, staunch, strong

and ready for the performance of its services as contemplated, and the loss and damage to said cargo was caused by the negligence of Luckenbach Steamship Company, Inc., its agents, servants and employees, in failing to provide a seaworthy vessel for carriage of said cargo to the knowledge and privity of Luckenbach Steamship Company, Inc., in the following particulars, among others:

1. Said vessel was generally unseaworthy.
2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with essential equipment aboard, many being uninstructed as to their respective duties.
3. A section of the main fire line had been removed and not replaced, nor was any alternative fire control system established.
4. The fire system control was inoperative.

Article IX.

Respondent, Luckenbach Steamship Company, Inc., through its servants, agents, employees and personnel, both officers and men, was guilty of negligence in the following particulars, among others:

1. It removed a section of the main fire line.
2. It failed to establish an alternative water connection after the fire main had been removed.

3. It failed to report to all hands that the fire system was inoperative.

4. It permitted welding aboard said vessel, knowing that the fire system was inoperative.

5. It failed to establish a shoreside connection to the fire control system.

6. It permitted and allowed welding to be performed aboard the vessel, particularly in Hold No. 5, when the same was loaded with hazardous articles.

7. It permitted and allowed welding to be performed aboard the vessel when the same was improperly supervised.

8. It permitted and allowed welding to be performed aboard the vessel when there was no suitable fire hose with nozzle attached connected to a nearby fire hydrant.

9. It permitted and allowed welding to be performed aboard the vessel without there being then and there present a competent attendant equipped with not less than one four-pound CO₂ fire extinguisher at hand and ready for instant use.

10. It failed to station a fire watch at the site of the welding operation.

Article X.

Respondent Albina Engine & Machine Works, Inc., was guilty of fault and negligence in the following particulars, among others:

1. It performed welding aboard the vessel without having first ascertained whether the vessel was equipped with a fire control system in good operating order.

2. It performed welding aboard the vessel, and particularly in Hold No. 5, in the presence of hazardous articles, without a suitable fire hose with nozzle attached connected to a nearby fire hydrant.

3. It permitted and allowed welding sparks to ignite the cargo in said hold.

4. It failed to properly supervise the welding operations.

5. It failed to maintain a fire watch.

6. It failed to have present during welding operations under such circumstances then and there attendant, a competent attendant equipped with not less than one four-pound CO₂ fire extinguisher at hand and ready for instant use.

7. It failed to properly screen the welding operations.

Article XI.

The unseaworthiness of the vessel, the faults and negligence, both personal and otherwise, of her owner, and the faults and negligence of Albina Engine & Machine Works, Inc., concurring together and acting in concert, constituted the sole, proximate, contributing and concurring causes of the fire

and the loss and damage to said cargo in the foregoing particulars, and in particulars undisclosed at the present time. Libelant reserves the right of amendment hereto in harmony with the proof thereof.

Article XII.

By reason of the premises, libelant has sustained damages in the total sum of \$9,038.49 with interest accruing thereon at the legal rate until paid; that no credits exist upon or against said total sum and no payments have been made thereon, recovery of which is asserted against respondents, and each of them.

Article XIII.

All and singular, the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore, libelant prays that process in due form of law in accordance with the practice of this honorable court may issue against the vessel, the S. S. Robert Luckenbach, her engines, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel, and that this court hear the evidence which libelant will produce in support of the allegations of this libel, or any amendment thereto, and will enter a decree in favor of libelant and will order the same to be paid and satisfied out of the said proceeds of the vessel, the S. S. Robert Luckenbach.

That process in due form of law, according to the practices of this honorable court in causes of admiralty and maritime jurisdiction, issue against the Luckenbach Steamship Company, Inc., and against Albina Engine & Machine Works, Inc., and each of them, citing them, and each of them, to appear and answer on oath all matters and things aforesaid and be required to deposit security for all damages sustained, and that this honorable court may adjudge and decree that respondents, Luckenbach Steamship Company, Inc., and Albina Engine & Machine Works, Inc., pay to libelant its damages as aforesaid with interests and costs.

Libelant further prays that this honorable court grant to it such other and further relief as it may deem meet and proper in the premises.

KOERNER, YOUNG,
McCOLLOCH & DEZENDORF,

/s/ JOHN GORDON GEARIN,
Proctors for Libelant.

Duly verified.

[Endorsed]: Filed September 19, 1958.

In the United States District Court
for the District of Oregon

Civil No. 9997

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation,

Libelant,

vs.

The SS ROBERT LUCKENBACH, her Engines,
Tackle, Apparel and Furniture, LUCKEN-
BACH STEAMSHIP COMPANY, INC., a
Delaware Corporation, and ALBINA ENGINE
& MACHINE WORKS, INC., an Oregon Cor-
poration,

Respondents.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,

Cross-Claimant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent.

ANSWER OF LUCKENBACH STEAMSHIP
COMPANY, INC., AND CROSS-CLAIM
AGAINST ALBINA ENGINE & MA-
CHINE WORKS, INC.

To the Honorable Claude McColloch, Gus J. Sol-
omon and William G. East, Judges of the
Above-Entitled Court:

The answer of Luckenbach Steamship Company, Inc., to the libel herein, admits, denies and alleges as follows:

Article I.

Admits the allegations of Article I.

Article II.

Admits the allegations of Article II.

Article III.

Admits the allegations of Article III.

Article IV.

Admits the allegations of Article IV.

Article V.

Admits the allegations of Article V, except the allegation that the said cargo was delivered to the ship in good order and condition, as to which respondent has no knowledge; and therefore denies, but admits that the packages were delivered in apparent good order and condition.

Article VI.

Admits the allegations of Article VI.

Article VII.

Answering Article VII, respondent denies the same, except as hereinafter admitted.

Article VIII.

For answer to Article VIII, respondent denies the same.

Article IX.

For answer to Article IX, respondent denies the same.

Article X.

For answer to Article X, since the allegations therein are solely against Albina Engine & Machine Works, Inc., this respondent neither admits nor denies the same, but leaves those matters to the proofs.

Article XI.

For answer to Article XI, insofar as the allegations therein are against this respondent, respondent denies the same.

Article XII.

For answer to Article XII, respondent denies knowledge or information sufficient to form a belief as to the allegations therein.

Article XIII.

For answer to Article XIII, respondent denies that the premises are true, but admits the jurisdiction of the Court.

For a further and separate answer and defense, respondent alleges as follows:

That on or about April 2nd, 1958, while the steamship Robert Luckenbach was lying in Port-

land Harbor at the Luckenbach Dock, certain repairs necessitating welding were being done to a ladder in No. 5 hold, by the respondent Albina Engine & Machine Works, Inc., and that in consequence of said welding operations fire broke out in the cargo in No. 5 hold, and certain damage was incurred as a result of the fire and water used to extinguish it. Respondent admits that at the time of the fire a section of the main fire line in the engine room had been removed, and that no water connection had been made with the hydrant on the dock, but alleges that the removal of the said section did not render the ship's fire system inoperative since there were alternate pipelines of the fire system that were still usable, notwithstanding the removal of the said section, and that, in any event, no act or omission of respondents was the cause of the fire, but that the real proximate cause was the negligence of Albina Engine & Machine Works, Inc., in the manner in which it conducted the welding operations, as hereinafter alleged in the following cross-claim against it.

For a second, further and separate answer and defense, respondent alleges as follows:

The said fire was caused without any design or neglect of respondent, and the respondent claims the benefit of Section 4282 of the Revised Statutes; Section 182 of Title 46, U.S.C. (the Fire Statute), which is also incorporated in clause 13 of the bill of lading under which these goods were shipped, and by virtue of the foregoing this respondent al-

leges that it is not liable for any of the consequent damage to libelant's merchandise which was shipped on said vessel.

For a third, further and separate answer and defense, respondent alleges as follows:

In clause 17 of the bill of lading under which said merchandise was shipped, it is provided that neither carrier nor vessel (i.e., this respondent) shall be liable for any loss, damage or delay arising from "fire from any cause on land or on water, whether on board ship, on cars, lighters, in warehouse or on wharves or elsewhere; water or steam or chemicals used for the purpose of extinguishing fire;" and this respondent claims the benefit of said clause and alleges that by virtue thereof it is not liable for the damage to libelant's merchandise.

For a fourth, further and separate answer and defense, respondent alleges as follows:

Clause 18 of the bill of lading under which said goods were shipped is as follows: "It is hereby mutually agreed that the shipper of the goods has been given a choice of freight rates as per tariff published, for the transportation of the goods covered by this bill of lading and that the freight on the goods is based upon the declared value of said goods. The shipper declares and agrees that, unless a different valuation is stated in this bill of lading and freight paid thereon as per tariff, the value of said goods is not more than \$500.00 per piece or package, and in no case more than the invoice

value of said goods at point of shipment, and in the case of shipments moving under released rates, as provided for in the tariff, liability shall not exceed the provision of such released rates and in no case be in excess of the invoice value at point of shipment as provided for herein. And it is further agreed that all claims for loss, damage or delay for which the shipowner or charterer may be liable shall be adjusted upon the basis of value declared herein, or proportionate part thereof in case of partial loss or damage; provided, however, that in no case shall the shipowner or charterer be liable for any loss or damage in excess of the actual pecuniary loss or damage sustained by the shipper, owner or consignee.”

Respondent further alleges that libelant was given a choice of freight rates, as provided in said clause, and did not declare any different valuation as provided in said clause, and that in no event can respondent be liable for more than \$500.00 per piece or package of said merchandise, or the invoice value of said goods at point of shipment.

Cross-Claim

Further answering, and by way of cross-claim against Albina Engine & Machine Works, Inc., Luckenbach Steamship Company, Inc., alleges as follows:

Article I.

Cross-Claimant, Luckenbach Steamship Company, Inc., employed Albina Engine & Machine

Works, Inc., as an independent contractor to do certain welding repairs on a ladder in No. 5 hold of the steamship Robert Luckenbach, and Albina Engine & Machine Works, Inc., undertook said work on April 2nd, 1958.

Cross-respondent Albina Engine & Machine Works, Inc., sent its welders aboard the said ship, and they entered the said No. 5 hold and began the said welding operations, with only 2 men and without a fire watch, and without any water available in quantity to put out any fire, or means of spraying water upon any fire that might break out, and without screening their welding operations from adjacent cargo, and without notifying any officers of the ship that they were about to conduct said welding operations. Fire broke out in the cargo of No. 5 hold as a result of the sparks from the welding, and the cargo was considerably damaged by burning and also by the water subsequently used to put it out, and cargo was also damaged in No. 4 hold by water directed into said hold to prevent the cargo therein from being ignited by the heat engendered in the bulkhead between No. 4 and No. 5 holds as a result of the fire in No. 5 hold.

Article II.

Cross-respondent Albina Engine & Machine Works, Inc., breached its contract to perform the said welding operations with reasonable safety, and was negligent in the following particulars, and the said breach and the said negligence were the sole

and proximate cause of the damage which is the subject of this suit,

(1) It boarded the vessel and commenced said welding operations without any notice to any of the ship's officers that it was about to do so, and without ascertaining the condition of the fire control system on the ship.

(2) It performed the welding in No. 5 hold in the presence of hazardous articles, without any water of any kind available except a small can containing perhaps 2 gallons, which was entirely inadequate to put out any fire, and without any other means of extinguishing a fire.

(3) It did not screen off the welding operations from adjacent cargo, or in any way isolate them from the cargo, and permitted and allowed welding sparks to ignite the cargo in said hold.

(4) It failed to properly supervise the welding operations.

(5) It failed to maintain a fire watch.

(6) It failed to have present during welding operations a competent attendant equipped with not less than one 4-pound CO₂ fire extinguisher at hand and ready for instant use.

Article III.

The aforesaid acts and conduct of cross-respondent Albina Engine & Machine Works, Inc., in breach of its contract, and negligent as aforesaid, were the sole proximate cause of the damage to

said cargo but if, on the proofs as finally submitted, the Court should be of the opinion that this respondent, Luckenbach Steamship Company, Inc., is in any way liable for all or part of the damage, then this respondent, as cross-claimant against Albina Engine & Machine Works, Inc., alleges that the real, active cause of the damage was Albina's breach of contract and negligence as aforesaid, and claims indemnity over or contribution from Albina, or a division of damages, all as to the Court may seem to be warranted by the proofs.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, respondent and cross-claimant, Luckenbach Steamship Company, Inc., prays that libellant take nothing, or that if any damages are awarded against this respondent, then in that event it may recover over by way of indemnity or contribution from cross-respondent, Albina Engine & Machine Works, Inc., together with its costs and disbursements, and for such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

WOOD, MATTHIESSEN,
WOOD & TATUM,

/s/ ERSKINE WOOD,

Proctors for Luckenbach
Steamship Company, Inc.

Duly verified.

[Endorsed]: Filed November 17, 1958.

[Title of District Court and Cause.]

Civil No. 9997

ANSWER OF RESPONDENT ALBINA
ENGINE & MACHINE WORKS, INC.

To: The Honorable Gus J. Solomon and William
G. East, Judges of the Above-Entitled Court:

The answer of Albina Engine & Machine Works,
Inc., to the libel herein, admits, denies and alleges:

Article I.

For answer to Articles I, II, III and IV of the
libel, this respondent admits the allegations thereof.

Article II.

For answer to Article V, this respondent lacks
knowledge or information sufficient to form a belief
as to the truth or falsity of the allegations thereof,
and therefore denies the same.

Article III.

For answer to Article VI, this respondent admits
that on April 2, 1958, while in port at Portland,
Oregon, the SS Robert Luckenbach was undergoing
certain repairs performed and to be performed by
this respondent, but respondent lacks knowledge or
information sufficient to form a belief as to the
truth or falsity of the other allegations of Article
VI, and therefore denies the same.

Article IV.

For answer to Article VII, this respondent admits that on April 2, 1958, a fire occurred aboard the SS Robert Luckenbach and that some cargo, the ownership of which is unknown to this respondent, was damaged therein, but denies the remaining allegations of Article VII insofar as they are directed against this respondent.

Article V.

For answer to Article VIII, this respondent admits that Luckenbach Steamship Company, Inc., failed to provide a seaworthy vessel in the particulars alleged therein, among others.

Article VI.

For answer to Article IX, this respondent admits that Luckenbach Steamship Company, Inc., was guilty of negligence in the particulars alleged therein, among others.

Article VII.

For answer to Article X, this respondent denies the same.

Article VIII.

For answer to Article XI, insofar as the same is directed against this respondent, this respondent denies the same.

Article IX.

For answer to Article XII, this respondent lacks knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations therein, and therefore denies the same.

Article X.

For answer to Article XIII, this respondent admits the jurisdiction of this Honorable Court but denies the truth of the allegations of the libel, except as to those hereinbefore expressly admitted or qualified.

For a further and separate answer and defense, this respondent alleges:

Article I.

On or about April 2, 1958, while the SS Robert Luckenbach was berthed at the Luckenbach dock in the harbor at Portland, Oregon, this respondent, at the request of Luckenbach Steamship Company, Inc., was engaged in certain repair work aboard said vessel. These repairs included certain work involving welding on a ladder in the No. 5 hold. Respondent Luckenbach Steamship Company undertook to remove all cargo from the area of said ladder before the time when said welding was to be performed. At the time this respondent came aboard to commence welding, all cargo had been removed from an area surrounding the ladder. This respondent proceeded to commence its welding operation in reliance on Luckenbach Steamship Company's undertaking to remove cargo to the extent deemed by it to be necessary.

Article II.

While said welding was being performed, with proper precautions by this respondent and without any fault or neglect whatever by this respondent, a fire broke out in certain cargo in No. 5 hold. The fire would have been extinguished before any significant damage occurred were it not for the unseaworthiness of the SS Robert Luckenbach and the fault and neglect of the respondent Luckenbach Steamship Company and its officers and agents, as hereinafter more fully alleged.

Article III.

Respondent Luckenbach Steamship Company, Inc., failed to make the SS Robert Luckenbach tight, staunch, strong and ready for the performance of its services, and any loss or damage to the cargo of the libelants was caused by the negligence of Luckenbach Steamship Company, Inc., its agents, servants and employees, in failing to provide a seaworthy vessel for the carriage of libelants' cargo, and other cargo aboard said vessel, to the knowledge and privity of Luckenbach Steamship Company, Inc., in the following particulars, among others:

1. Said vessel was generally unseaworthy.
2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with essential equipment aboard, and many being uninstructed as to their respective duties.

3. No alternative fire control system was established after a section of the main fire line was removed.

4. The ship's fire line was not connected to a readily accessible fire hydrant on the adjacent dock.

Article IV.

Respondent Luckenbach Steamship Company, Inc., through its officers, agents, employees and personnel, was guilty of negligence in the following particulars, among others:

1. It failed to establish an alternative water connection after a section of the main fire line had been removed.

2. It failed to report to all hands that the fire system was inoperative.

3. It failed to establish a connection to the ship's fire line from a nearby fire hydrant on the adjacent dock, although such connection could have been simply and conveniently made.

4. It failed to provide a suitable and operable fire hose, with nozzle attached, at the time and place where it knew welding was to be performed.

5. It failed to inform this respondent's welding crew that the main fire line was inoperative.

Article V.

All and singular, the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, respondent Albina Engine & Machine Works, Inc., prays that the libelant take nothing herein and that this respondent recover its costs and disbursements incurred herein and for such other and further relief as to the Court may seem just and in accordance with the admiralty practice.

KRAUSE, LINDSAY,
NAHSTOLL & KENNEDY,

/s/ GUNTHER F. KRAUSE,

Proctors for Respondent Albina Engine & Machine Works, Inc.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 9, 1959.

[Title of District Court and Cause.]

ANSWER TO CROSS-CLAIM AND CROSS-LIBEL AGAINST LUCKENBACH STEAMSHIP COMPANY, INC.

To: The Honorable Gus J. Solomon and William G. East, Judges of the Above-Entitled Court:

The answer of Albina Engine & Machine Works, Inc., to the cross-claim of Luckenbach Steamship Company, Inc., herein, admits, denies and alleges:

Article I.

For answer to Article I of the cross-claim, admits that cross-claimant Luckenbach Steamship

Company, Inc., employed Albina Engine & Machine Works, Inc., to do certain repair work on a ladder in No. 5 hold of the S.S. Robert Luckenbach and that Albina Engine & Machine Works, Inc., undertook to perform said repair work on April 2, 1958, and that a fire occurred in No. 5 hold while said repair work was in progress and denies the remaining allegations thereof.

Article II.

For answer to Article II of the cross-claim, denies the same.

Article III.

For answer to Article III of the cross-claim, denies the same.

Further answering and for cause of suit against Luckenbach Steamship Company, Inc., Albina Engine & Machine Works, Inc., alleges as follows:

Article I.

On or about April 2, 1958, cross-respondent Luckenbach Steamship Company, Inc., engaged Albina Engine & Machine Works, Inc., to do certain repair work on a ladder in No. 5 hatch of the S.S. Robert Luckenbach while said vessel was berthed at Luckenbach Dock in the harbor at Portland, Oregon. The nature of the said repairs necessarily required that this cross-libelant perform welding on and about said ladder, as cross-respondent Luckenbach

Steamship Company, Inc., fully realized and contemplated. Cross-libelant was instructed by cross-respondent to perform said work between the hours of 6:00 p.m. and 7:00 p.m. on April 2, 1958, and cross-respondent Luckenbach Steamship Company, Inc., undertook to have all cargo removed from the area of the ladder requiring repair work prior to the time when the welding was to be performed.

Cargo was removed from an area surrounding the ladder where welding was to be performed prior to about 6:00 p.m. on April 2, 1958, at which time the employees of cross-libelant came aboard the said vessel to perform said welding. Cross-libelant relied on cross-respondent's undertaking to remove cargo to the extent deemed by cross-respondent to be necessary. Cross-libelant took additional and proper precautions to avoid the starting or spreading of any fire in said vessel or cargo, and commenced to perform the necessary repairs on said ladder.

Despite such proper precautions taken by this cross-libelant and without any fault or neglect whatever by this cross-libelant, a fire broke out in said cargo; thereupon, cross-libelant's employees took immediate and proper steps in an attempt to put out the said fire before any significant damage occurred, and would have been able to do so were it not for the unseaworthiness of the S.S. Robert Luckenbach, its gear, tackle and appliances, and for the fault and neglect of the Luckenbach

Steamship Company, Inc., its officers, agents, employees and other personnel as will hereinafter more fully appear. As the sole and proximate result of said unseaworthiness and fault of the cross-respondent Luckenbach Steamship Company, Inc., no water was available in the ship's fire lines; such unseaworthiness and neglect by cross-respondent directly and proximately caused the fire to spread, resulting in any damage or loss which libelant herein may have sustained.

Article II.

Cross-respondent Luckenbach Steamship Company, Inc., failed to make the S.S. Robert Luckenbach tight, staunch, strong, and ready for the performance of its services, and any loss or damage to the cargo of the libelants herein was caused by the negligence of Luckenbach Steamship Company, Inc., its agents, servants and employees in failing to provide a seaworthy vessel for the carriage of libelant's cargo, and other cargo aboard said vessel, to the knowledge and privity of Luckenbach Steamship Company, Inc., in the following particulars, among others:

1. Said vessel was generally unseaworthy.
2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with essential equipment aboard, and many being uninstructed as to their respective duties.

3. No alternative fire control system was established after a section of the main fire line was removed.

4. The ship's fire line was not connected to a readily accessible fire hydrant on the adjacent dock.

Article III.

Cross-respondent Luckenbach Steamship Company, Inc., through its officers, agents, employees and personnel, was guilty of negligence in the following particulars, among others:

1. It failed to establish an alternative water connection after a section of the main fire line had been removed.

2. It failed to report to all hands that the fire system was inoperative.

3. It failed to establish a connection to the ship's fire line from a nearby fire hydrant on the adjacent dock, although such connection could have been simply and conveniently made.

4. It failed to provide a suitable and operable fire hose, with nozzle attached, at the time and place where it knew welding was to be performed.

5. It failed to inform this cross-libelant's welding crew that the main fire line was inoperative.

Article IV.

The negligent acts and conduct of cross-respondent Luckenbach Steamship Company, Inc., and the

unseaworthiness of the S.S. Robert Luckenbach, as aforesaid, were the sole and proximate cause of any damage to the cargo of libelant herein. However, if on the proofs as finally submitted the Court should be of the opinion that cross-libelant is in any way liable for all or any part of such damage as libelant herein may have sustained, then this respondent, as cross-libelant against Luckenbach Steamship Company, Inc., alleges that there would have been no damage to libelant's cargo, or to any cargo, except for the negligence of the cross-respondent Luckenbach Steamship Company, Inc., and the unseaworthiness of the vessel, as aforesaid. Cross-libelant therefore claims indemnity over or contribution from Luckenbach Steamship Company, Inc., or a division of damages, as the Court may deem to be warranted by the proofs.

Article V.

All and singular, the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, respondent and cross-libelant Albina Engine & Machine Works, Inc., prays that Luckenbach Steamship Company, Inc., take nothing on its cross-claim, and that if any damages to libelant are awarded against this respondent and cross-libelant, then and in that event, this respondent and cross-libelant may recover over by way of indemnity or contribution from cross-respondent Luckenbach Steamship Company, Inc., together

with its costs and disbursements, and for such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

KRAUSE, LINDSAY,
NAHSTOLL & KENNEDY,

/s/ GUNTHER F. KRAUSE,

Proctors for Respondent and Cross-Libelant Albina
Engine & Machine Works, Inc.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 9, 1959.

In the United States District Court
for the District of Oregon

Civil No. 10,002

ZELLERBACH PAPER COMPANY, a California Corporation, and NORTHWEST GROCERY COMPANY, an Oregon Corporation,

Libelants,

vs.

The S.S. ROBERT LUCKENBACH, Her Engines, Tackle, Apparel and Furniture; LUCKENBACH STEAMSHIP COMPANY, INC., a Delaware Corporation, and ALBINA ENGINE & MACHINE WORKS, an Oregon Corporation,

Respondents.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Delaware Corporation,

Cross-Claimant and Cross-Respondent,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent and Cross-Libelant.

ANSWER TO CROSS-CLAIM AND CROSS-
LIBEL AGAINST LUCKENBACH STEAM-
SHIP COMPANY, INC.

To: The Honorable Gus J. Solomon and William
G. East, Judges of the Above-Entitled Court:

The answer of Albina Engine & Machine Works,
Inc., to the cross-claim of Luckenbach Steamship
Company Inc., herein, admits, denies and alleges:

Article I.

For answer to Article I of the cross-claim, ad-
mits that cross-claimant Luckenbach Steamship
Company, Inc., employed Albina Engine & Machine
Works, Inc., to do certain repair work on a ladder
in No. 5 hold of the S.S. Robert Luckenbach and
that Albina Engine & Machine Works, Inc., under-
took to perform said repair work on April 2, 1958,
and that a fire occurred in No. 5 hold while said
repair work was in progress and denies the re-
maining allegations thereof.

Article II.

For answer to Article II of the cross-claim, denies the same.

Article III.

For answer to Article III of the cross-claim, denies the same.

Further answering and for cause of suit against Luckenbach Steamship Company, Inc., Albina Engine & Machine Works, Inc., alleges as follows:

Article I.

On or about April 2, 1958, cross-respondent Luckenbach Steamship Company, Inc., engaged Albina Engine & Machine Works, Inc., to do certain repair work on a ladder in No. 5 hatch of the S.S. Robert Luckenbach while said vessel was berthed at Luckenbach Dock in the harbor at Portland, Oregon. The nature of the said repairs necessarily required that this cross-libelant perform welding on and about said ladder, as cross-respondent Luckenbach Steamship Company, Inc., fully realized and contemplated. Cross-libelant was instructed by cross-respondent to perform said work between the hours of 6:00 p.m. and 7:00 p.m. on April 2, 1958, and cross-respondent Luckenbach Steamship Company, Inc., undertook to have all cargo removed from the area of the ladder requiring repair work prior to the time when the welding was to be performed.

Cargo was removed from an area surrounding the ladder where welding was to be performed prior to about 6:00 p.m. on April 2, 1958, at which time the employees of cross-libelant came aboard the said vessel to perform said welding. Cross-libelant relied on cross-respondent's undertaking to remove cargo to the extent deemed by cross-respondent to be necessary. Cross-libelant took additional and proper precautions to avoid the starting or spreading of any fire in said vessel or cargo, and commenced to perform the necessary repairs on said ladder.

Despite such proper precautions taken by this cross-libelant and without any fault or neglect whatever by this cross-libelant, a fire broke out in said cargo; thereupon, cross-libelant's employees took immediate and proper steps in an attempt to put out the said fire before any significant damage occurred, and would have been able to do so were it not for the unseaworthiness of the S.S. Robert Luckenbach, her gear, tackle and appliances, and for the fault and neglect of the Luckenbach Steamship Company, Inc., its officers, agents, employees and other personnel as will hereinafter more fully appear. As the sole and proximate result of said unseaworthiness and fault of the cross-respondent Luckenbach Steamship Company, Inc., no water was available in the ship's fire lines; such unseaworthiness and neglect by cross-respondent directly and proximately caused the fire to spread, resulting in any damage or loss which libelants herein may have sustained.

Article II.

Cross-respondent Luckenbach Steamship Company, Inc., failed to make the S.S. Robert Luckenbach tight, staunch, strong, and ready for the performance of its services, and any loss or damage to the cargo of the libelants herein was caused by the negligence of Luckenbach Steamship Company, Inc., its agents, servants and employees in failing to provide a seaworthy vessel for the carriage of libelants' cargo, and other cargo aboard said vessel, to the knowledge and privity of Luckenbach Steamship Company, Inc., in the following particulars, among others:

1. Said vessel was generally unseaworthy.

2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with essential equipment aboard, and many being uninstructed as to their respective duties.

3. No alternative fire control system was established after a section of the main fire line was removed.

4. The ship's fire line was not connected to a readily accessible fire hydrant on the adjacent dock.

Article III.

Cross-respondent Luckenbach Steamship Company, Inc., through its officers, agents, employees and personnel, was guilty of negligence in the following particulars, among others:

1. It failed to establish an alternative water connection after a section of the main fire line had been removed.

2. It failed to report to all hands that the fire system was inoperative.

3. It failed to establish a connection to the ship's fire line from a nearby fire hydrant on the adjacent dock, although such connection could have been simply and conveniently made.

4. It failed to provide a suitable and operable fire hose, with nozzle attached, at the time and place where it knew welding was to be performed.

5. It failed to inform this cross-libelant's welding crew that the main fire line was inoperative.

Article IV.

The negligent acts and conduct of cross-respondent Luckenbach Steamship Company, Inc., and the unseaworthiness of the S.S. Robert Luckenbach, as aforesaid, were the sole and proximate cause of any damage to the cargo of libelants herein. However, if on the proofs as finally submitted the Court should be of the opinion that cross-libelant is in any way liable for all or any part of such damages as libelants herein may have sustained, then this respondent, as cross-libelant against Luckenbach Steamship Company, Inc., alleges that there would have been no damage to libelants' cargo, or to any cargo, except for the negligence of the cross-respondent Luckenbach Steamship Company, Inc., and the un-

seaworthiness of the vessel, as aforesaid. Cross-libelant therefore claims indemnity over or contribution from Luckenbach Steamship Company, Inc., or a division of damages, as the Court may deem to be warranted by the proofs.

Further answering and for second cause of suit against Luckenbach Steamship Company, Inc., Albina Engine & Machine Works, Inc., alleges as follows:

Article I.

Between April 4, 1958, and April 9, 1958, cross-libelant Albina Engine & Machine Works, Inc., did perform certain work and services and did furnish certain labor and materials for the repair of the S.S. Robert Luckenbach at the special instance and request of cross-respondent Luckenbach Steamship Company, Inc., for which said cross-respondent undertook and agreed to pay the sum of \$28,933.89, the reasonable value thereof.

Article II.

No part of said sum of \$28,933.89 has been paid, although cross-libelant has often requested and demanded payment.

Article III.

By virtue of the premises, cross-respondent Luckenbach Steamship Company, Inc., is presently indebted to cross-libelant Albina Engine & Machine Works, Inc., in the amount of \$28,933.89.

All and singular, the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, respondent and cross-libelant Albina Engine & Machine Works, Inc., prays that Luckenbach Steamship Company, Inc., take nothing on its cross-claim, and that if any damages to libelants are awarded against this respondent and cross-libelant, then and in that event, this respondent and cross-libelant may recover over by way of indemnity or contribution from cross-respondent Luckenbach Steamship Company, Inc., and in any event that cross-libelant Albina Engine & Machine Works, Inc., recover from cross-respondent Luckenbach Steamship Company, Inc., the sum of \$28,933.89 on its second cause of suit, together with its costs and disbursements, and for such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

KRAUSE, LINDSAY,
NAHSTOLL & KENNEDY,

/s/ GUNTHER F. KRAUSE,
Proctors for Respondent and Cross-Libelant Albina
Engine & Machine Works, Inc.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 9, 1959.

[Title of District Court and Cause.]

Civil No. 10002

AMENDED CROSS-CLAIM & CROSS-LIBEL
OF LUCKENBACH STEAMSHIP COM-
PANY, INC., AGAINST ALBINA ENGINE
& MACHINE WORKS, INC., AND AN-
SWER OF LUCKENBACH STEAMSHIP
COMPANY, INC., TO CROSS-LIBEL OF
ALBINA ENGINE & MACHINE WORKS,
INC.

To the Honorable Judges of the Above-Entitled
Court:

By way of amended cross-claim and cross-libel
against Albina Engine & Machine Works, Inc.,
Luckenbach Steamship Company, Inc., alleges as
follows:

Article I.

Cross-claimant and cross-libelant, Luckenbach
Steamship Company, Inc., employed Albina Engine
& Machine Works, Inc., as an independent contrac-
tor to do certain welding repairs on a ladder in
No. 5 hold of the steamship Robert Luckenbach,
and Albina Engine & Machine Works, Inc., under-
took said work on April 2nd, 1958.

Cross-respondent Albina Engine & Machine
Works, Inc., sent its welders aboard the said ship,
and they entered the said No. 5 hold and began the
said welding operations, with only 3 men and with-

out a fire watch, and without any water available in quantity to put out any fire or means of spraying water upon any fire that might break out, and without screening their welding operations from adjacent cargo, and without notifying any officers of the ship that they were about to conduct said welding operations. Fire broke out in the cargo of No. 5 hold as a result of the sparks from the welding, and the cargo was considerably damaged by burning and also by the water subsequently used to put it out, and cargo was also damaged in No. 4 hold by water directed into said hold to prevent the cargo therein from being ignited by the heat engendered in the bulkhead between No. 4 and No. 5 holds as a result of the fire in No. 5 hold.

Article II.

Cross-respondent Albina Engine & Machine Works, Inc., breached its contract to perform the said welding operations with reasonable safety, and was negligent in the following particulars, and the said breach and the said negligence were the sole and proximate cause of the damage which is the subject of this suit.

(1) It boarded the vessel and commenced said welding operations without any notice to any of the ship's officers that it was about to do so, and without ascertaining the condition of the fire control system on the ship.

(2) It performed the welding in No. 5 hold in the presence of hazardous articles, without any

water of any kind available except a small can containing perhaps 2 gallons, which was entirely inadequate to put out any fire, and without any other means of extinguishing a fire.

(3) It did not screen off the welding operations from adjacent cargo, or in any way isolate them from the cargo, and permitted and allowed welding sparks to ignite the cargo in said hold.

(4) It failed to properly supervise the welding operations.

(5) It failed to maintain a fire watch.

(6) It failed to have present during welding operations a competent attendant equipped with not less than one 4-pound CO₂ fire extinguisher at hand and ready for instant use.

(7) It failed to have a suitable fire hose with nozzle attached, connected with a nearby fire hydrant, and to test the same before and during the welding operations and ready for instant use.

(8) In the aforesaid acts of neglect and breach of contract it violated §16-2527 of the Ordinances of the City of Portland.

Article III.

By reason of the aforesaid acts and conduct of Albina Engine & Machine Works, Inc., and in consequence of its breach of its contract, Luckenbach Steamship Company, Inc., has been damaged in

the sum of \$41,172.71 with interest from April 2, 1958; and if it should be held liable in whole or in part for damage to cargo, as claimed by cargo claimants in this litigation, it will have been further damaged by the said breach of contract in the amounts which it may be compelled to pay on account of said cargo claims.

Answer to Cross-Libel of Albina Engine &
Machine Works, Inc.

For answer to the cross-libel of Albina Engine & Machine Works, Inc., in which said cross-libelant claims \$28,933.89 as due it for repairs to the S.S. Robert Luckenbach, Luckenbach Steamship Company, Inc., admits, denies and alleges as follows.

I.

For answer to Article I, denies the same.

II.

For answer to Article II, admits that the sum therein alleged has not been paid, although payment has been demanded.

III.

For answer to Article III, denies the same.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, Luckenbach Steamship Company, Inc., prays that libelants, Zellerbach Paper Com-

pany and Northwest Grocery Company take nothing, or that if any damages are awarded against it and in favor of libelants, then and in that event it may recover over by way of indemnity the amount of said damages from Albina Engine & Machine Works, Inc., and that in addition it may recover from Albina Engine & Machine Works, Inc., its own damages in the sum of \$41,172.71, with interest from April 2, 1958, together with its costs and disbursements, and that Albina Engine & Machine Works, Inc., upon its cross-libel against Luckenbach Steamship Company, Inc., recover nothing, and that Luckenbach Steamship Company, Inc., may have its costs and disbursements and such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

WOOD, MATTHIESSEN,
WOOD & TATUM,

/s/ ERSKINE WOOD,

Proctors for Luckenbach
Steamship Company, Inc.

Duly verified.

Service of copy acknowledged.

[Endorsed]: Filed July 21, 1959.

[Title of District Court and Cause.]

Civil No. 10,002

ANSWER OF ALBINA ENGINE & MACHINE
WORKS, INC., TO AMENDED CROSS-
CLAIM AND CROSS-LIBEL OF LUCKEN-
BACH STEAMSHIP COMPANY, INC.

To: The Honorable Judges of the United States
District Court for the District of Oregon, in
Admiralty Sitting:

The answer of Albina Engine & Machine Works, Inc., to the amended cross-claim and cross-libel of Luckenbach Steamship Company, Inc., admits, denies and alleges:

Article I.

For answer to Article I of the amended cross-claim and cross-libel, admits that Luckenbach Steamship Company, Inc., employed Albina Engine & Machine Works, Inc., as an independent contractor to do certain welding repairs on a ladder in No. 5 hold of the S.S. Robert Luckenbach, and that Albina Engine & Machine Works, Inc., undertook said work on April 2, 1958; admits that cross-respondent Albina Engine & Machine Works, Inc., sent a three-man welding crew aboard the said ship and that they entered the No. 5 hold and began the said welding operations; admits that on April 2, 1958, a fire broke out in the cargo of No. 5 hold; admits that some cargo, the ownership of which is unknown to this cross-respondent, was

damaged by fire and by water, the extent of such damage being unknown to this cross-respondent;

Denies the remaining allegations of Article I of the amended cross-claim and cross-libel, and the whole thereof.

Article II.

For answer to Article II of the amended cross-claim and cross-libel, denies the same.

Article III.

For answer to Article III of the amended cross-claim and cross-libel, denies the same.

Wherefore, Albina Engine & Machine Works, Inc., prays that cross-claimant and cross-libelant Luckenbach Steamship Company, Inc., recover nothing upon its amended cross-claim and cross-libel against Albina Engine & Machine Works, Inc., and that Albina Engine & Machine Works, Inc., may have and recover its costs and disbursements herein, and such other, further and different relief as to the Court may seem just and in accordance with the admiralty practice.

KRAUSE, LINDSAY &
NAHSTOLL,

/s/ GUNTHER F. KRAUSE,

Proctors for Respondent Albina Engine & Machine
Works, Inc.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 17, 1959.

In the United States District Court
for the District of Oregon

Civil No. 9997

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation,

Libelant,

vs.

The S.S. ROBERT LUCKENBACH, Her En-
gines, Tackle, Apparel and Furniture; LUCK-
ENBACH STEAMSHIP COMPANY, INC.,
a Delaware Corporation, and ALBINA EN-
GINE & MACHINE WORKS, INC., an Ore-
gon Corporation,

Respondents.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,

Cross-Claimant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Delaware Corporation,

Cross-Claimant and Cross-Respondent,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent and Cross-Libelant.

Civil No. 10,001

LONGVIEW FIBRE COMPANY, a Corporation,
and WALTHAM BAG AND PAPER COM-
PANY, a Corporation,

Libelants,

vs.

The S.S. ROBERT LUCKENBACH, Her En-
gines, Tackle, Apparel and Furniture; LUCK-
ENBACH STEAMSHIP COMPANY, INC.,
a Delaware Corporation, and ALBINA EN-
GINE & MACHINE WORKS, INC., an Ore-
gon Corporation,

Respondents.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,

Cross-Claimant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
a Corporation,

Cross-Respondent.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Delaware Corporation,

Cross-Claimant and Cross-Respondent,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent and Cross-Libelant.

Civil No. 10,002

ZELLERBACH PAPER COMPANY, a California Corporation, and NORTHWEST GROCERY COMPANY, an Oregon Corporation,

Co-Libelants,

vs.

The S.S. ROBERT LUCKENBACH, Her Engines, Tackle, Apparel and Furniture; LUCKENBACH STEAMSHIP COMPANY, INC., a Delaware Corporation, and ALBINA ENGINE & MACHINE WORKS, INC., an Oregon Corporation,

Respondents.

LUCKENBACH STEAMSHIP COMPANY, INC., a Corporation,

Cross-Claimant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC., an Oregon Corporation,

Cross-Respondent.

LUCKENBACH STEAMSHIP COMPANY, INC., a Delaware Corporation,

Cross-Claimant and Cross-Respondent,

vs.

ALBINA ENGINE & MACHINE WORKS, INC., an Oregon Corporation,

Cross-Respondent and Cross-Libelant.

Civil No. 328-59

PEYTON BAG COMPANY, a Corporation,
Libelant,
vs.

The S.S. ROBERT LUCKENBACH, Her En-
gines, Tackle, Apparel and Furniture; LUCK-
ENBACH STEAMSHIP COMPANY, INC.,
a Delaware Corporation, and ALBINA EN-
GINE & MACHINE WORKS, INC., an Ore-
gon Corporation, Respondents.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,
Respondent and Cross-Libelant,

vs.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Delaware Corporation,
Cross-Respondent.

Civil No. 335-59

W. E. FINZER & COMPANY, a Corporation,
Libelant,
vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
a Corporation, Respondent.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,
Third-Party Respondent.

Civil No. 336-59

HEARST PUBLISHING COMPANY, INC.
(PEJEPSCOT PAPER DIVISION), a Corporation,

Libelant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
a Corporation,

Respondent.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,

Third-Party Respondent.

CONSOLIDATED PRETRIAL ORDER

To: The Honorable Gus J. Solomon, William G. East and John F. Kilkenny, Judges of the Above-Entitled Court:

The parties, with the approval of the court, agree to the following

Statement of Facts

I.

Libelants, Hershey Chocolate Corporation, Longview Fibre Company, Waltham Bag and Paper Company, Zellerbach Paper Company, Northwest Grocery Company, Peyton Bag Company, W. E. Finzer & Company, and Hearst Publishing Company, Inc. (Pejepscot Paper Division), were and

now are corporations and were the owners of certain goods, wares, and merchandise which had by them been delivered in apparent good order and condition to Luckenbach Steamship Company, Inc., a corporation (hereinafter referred to as "Luckenbach"), for delivery to Portland, Oregon, in consideration of agreed freight and in accordance with the terms and conditions of certain bills of lading.

II.

Said goods, wares and merchandises were loaded as cargo aboard the S.S. Robert Luckenbach, an ocean-going cargo vessel, registry No. 245923, owned and operated by Luckenbach, and while aboard said vessel in the city of Portland, Oregon, received damage by fire or water while said vessel was undergoing repairs performed and to be performed at said city by Albina Engine & Machine Works, Inc., a corporation (hereinafter referred to as "Albina").

III.

While said vessel was undergoing said repairs, a fire broke out aboard the vessel, which together with the water used to extinguish the same, caused the damage and loss of said cargo. At said time and place a section of the main fire line aboard the vessel had been removed. The fire aboard said vessel started as a result of sparks from welding by acetylene torch which was performed by employees of Albina, who were performing the repairs within the scope of their employment.

IV.

In the forenoon of April 2, 1958, the Chief Officer of the S.S. Robert Luckenbach reported to Luckenbach's port engineer, Mr. Sterling, that one of the lower rungs was missing from the iron ladder located in the after part of No. 5 hold, and Mr. Sterling engaged Albina to install a new rung. At that time the lower portion of the after ladder, No. 5 hold, was obscured by cargo consisting of metal conduit pipe stowed in the after part of No. 5 hold. The repair work to be done on the after ladder was a welding job and could not be done while longshoremen were working in the hold, as they were. Accordingly, it was mutually contemplated that the repair work would be performed some time between 6:00 and 7:00 p.m., the longshoremen's meal hour, by which time it was expected that discharge of the metal conduit pipe would have been completed.

The longshoremen ceased work for their meal hour at 6:00 p.m., and some time thereafter, Albina's three-man welding crew entered No. 5 hold of the ship to do the welding job. Said crew consisted of Smith, a boilermaker foreman, who was in charge; Larson, a welder; and Riley, a welder who was to act as fitter on this particular job.

The ladder in No. 5 hold requiring repair by replacement of a missing rung was not, in fact, the after ladder in that hold, as had been reported to Sterling, but in fact was the forward ladder in that hold. Sterling, having left the ship, did not

know this. Between the time when Sterling gave the order to repair the after ladder and the time the welders entered the hold, the cargo had been removed from around this ladder, and sufficiently removed from around the forward ladder, to expose both, so that it was evident to the welders which ladder needed repair. Accordingly, without further instructions, they proceeded to work on the forward ladder. Forward of this ladder, and extending clear across the width of the ship, was cargo consisting of several tiers of bales of burlap bags on the bottom, and cardboard cartons of construction paper on top. The distance between this cargo and the forward ladder, as stated by various witnesses, was from two to four feet. Mr. Smith placed two plywood "walk-boards," end to end, up against the cargo to serve as a screen or partition between it and the ladder. On the port side of the ladder he stood a carton or box next to and up against the plywood partition and extending aft from it, substantially at a right angle. In addition, he laid a one-inch board, athwartships, against and along the bottom of the plywood partition.

The place where the Albina men stood to perform the welding job on the forward ladder was clear of cargo. On the deck at this place was a "landing pad" which was a wooden floor covering the deck at this place used for landing cargo being loaded in the hold, thus protecting the deck from damage. Around the outside of this landing pad was a ramp which sloped slightly to the deck, the

slope of the forward edge of this ramp being toward the forward ladder.

The missing ladder rung was the second or third one up from the bottom. A temporary rung was in position there and was removed by Smith. The place where the new rung was to be welded in was between 4 and 5 feet above the landing pad (according to Smith).

In the No. 5 hold there was a can variously estimated to hold from three to five gallons containing drinking water for the longshoremen who had left it in the hold when they knocked off work. To what extent this can was filled with water is not agreed to by the parties. The welding crew brought no fire-fighting or fire extinguishing equipment of any kind on board the ship.

Albina's welder, Larson, struck an arc and began to burn off a small gob of metal where the old rung had been. Immediately, a spark or sparks or a piece of burning metal flew over the top of the partition and/or fell onto the forward ramp of the landing pad or upon the deck itself, rolled or bounced under or through the plywood partition, setting fire to the burlap bags.

Smith and his men pulled the plywood partition apart and tried to extinguish the fire with water from the above-mentioned can but were unsuccessful. Smith and Riley then came on deck to lower a ship's fire hose and to obtain water pressure; Lar-

son remained in the hold for a time to handle the hose.

Meanwhile, the city fire department had already been called. The city firemen extinguished the fire with water from their own hoses. According to the fire department's records, the call was received at 6:20 p.m. The time interval between the calling of the fire department and the arrival of the fire department personnel on the scene has been stated by various witnesses to have been from three or four minutes up to fifteen minutes. The firemen had water in No. 5 hold within four minutes after their arrival.

The fire in No. 5 hold so heated the bulkhead between No. 5 and No. 4 holds that there was a danger of fire occurring in No. 4 hold also. Therefore, the fire department poured water into No. 4 hold, damaging cargo stowed there.

Some of the ship's plates and the bulkhead between No. 4 and No. 5 holds were buckled and damaged by the fire, and the ship sustained other damage therefrom, all of which Albina repaired at a stated cost of \$28,933.89.

V.

At all times there were in full force and effect the following regulations:

Coast Guard, Department of the Treasury, Part 126, "Handling of Explosives or other Dangerous Cargoes within or Contiguous to Waterfront Facilities";

Code of Federal Regulations, Title 33, Section 126.15, Volume 22, Federal Registry No. 246, published December 20, 1957;

Code of Federal Regulations, Title 46, Part 146 to Part 149, revised as of January 1, 1958, Section 146.27-100, pages 582 and 602;

City Ordinance of the City of Portland, Section 16-2527, passed by the City Council of the City of Portland;

Code of Federal Regulations, Title 46, Section 142.02-20.

VI.

The parties stipulate that the testimony given before the United States Coast Guard Investigating Unit may, subject to objection as to materiality, relevancy and competency, be offered by any party and received into evidence.

VII.

The parties expressly stipulate that the foregoing statements of fact may be supplemented by additional testimony on behalf of any party to this proceeding.

Libelants' Contentions

I.

Libelants contend that the aforementioned loss and damage occurred proximately as the result of the many faults and neglects of Albina and Luckenbach, and each of them, concurring and combining.

II.

Luckenbach failed to make said vessel tight, staunch, strong and ready for the performance of its services as contemplated, and the loss and damage to said cargo was caused by the negligence of Luckenbach, its agents, servants and employees, in failing to provide a seaworthy vessel for carriage of said cargo to the knowledge and privity of Luckenbach, in the following particulars, among others:

1. Said vessel was generally unseaworthy.
2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with essential equipment aboard, many being uninstructed as to their respective duties.
3. A section of the main fire line had been removed and not replaced, nor was any alternative fire control system established.
4. The fire control system was inoperative.

III.

Luckenbach, through its servants, agents, employees and personnel, both officers and men, was guilty of negligence in the following particulars, among others:

1. It removed a section of the main fire line.
2. It failed to establish an alternative water connection after the fire main had been removed.
3. It failed to report to all hands that the fire control system was inoperative.

4. It permitted welding aboard said vessel, knowing that the fire system was inoperative.

5. It failed to establish a shoreside connection to the fire control system.

6. It permitted and allowed welding to be performed aboard the vessel, particularly in Hold No. 5, when the same was loaded with hazardous articles.

7. It permitted and allowed welding to be performed aboard the vessel when the same was improperly supervised.

8. It permitted and allowed welding to be performed aboard the vessel when there was no suitable fire hose with nozzle attached connected to a nearby fire hydrant

9. It permitted and allowed welding to be performed aboard the vessel without there being then and there present a competent attendant equipped with not less than one four-pound CO₂ fire extinguisher at hand and ready for instant use.

10. It failed to station a fire watch at the site of the welding operation.

11. It performed welding aboard the S. S. Robert Luckenbach in the hold of said vessel containing cargo classified as dangerous.

12. It performed repairs and work in or upon boundaries of holds without having ascertained and required that all precautions were taken to see that no residual of cargo was left in said hold sufficient to create a hazard.

13. It performed repairs aboard the vessel under the circumstances above set forth when the same were not necessary for the safety of the vessel, its passengers or crew, and when said repairs were not of an emergency nature.

IV.

Albina was guilty of fault and negligence in the following particulars, among others:

1. It performed welding aboard the vessel without having first ascertained whether the vessel was equipped with a fire control system in good operating order.

2. It performed welding aboard the vessel, and particularly in Hold No. 5, in the presence of hazardous articles, without a suitable fire hose with nozzle attached connected to a nearby fire hydrant.

3. It permitted and allowed welding sparks to ignite the cargo in said hold.

4. It failed to properly supervise the welding operations.

5. It failed to maintain a fire watch.

6. It failed to have present during welding operations under such circumstances then and there attendant, a competent attendant equipped with not less than one four-pound CO₂ fire extinguisher at hand and ready for instant use.

7. It failed to properly screen the welding operations.

8. It performed welding aboard the S. S. Robert Luckenbach in the hold of said vessel containing cargo classified as dangerous.

9. It performed repairs and work in or upon boundaries of holds without having ascertained and required that all precautions were taken to see that no residual of cargo was left in said hold sufficient to create a hazard.

10. It performed repairs aboard the vessel under the circumstances above set forth when the same were not necessary for the safety of the vessel, its passengers or crew, and when said repairs were not of an emergency nature.

V.

The unseaworthiness of the vessel, the faults and negligence, both personal and otherwise, of her owner, and the faults and negligence of Albina, concurring together and acting in concert, constituted the sole, proximate, contributing and concurring causes of the fire and the loss and damage to said cargo in the foregoing particulars.

VI.

Libelants contend, on information and belief, that efforts to extinguish the fire aboard the S. S. Robert Luckenbach caused additional damage to the vessel and to her cargo on board, and that Luckenbach, as owner and operator of the vessel, incurred expenses in its effort to extinguish the fire and to prevent the total loss of the vessel and her cargo.

VII.

Luckenbach, as owner, and its general average adjuster, if any, may seek general average contributions, salvage and special charged from libelants' shipments on account of loss, damage and expense suffered and incurred in fighting said fire, and the libelants may be obligated to pay general average, salvage and special charges for which their shipments may be legally liable. Libelants, however, do not concede at this time liability for general average contributions, but are not advised whether or not general average will be sought.

VIII.

By reason of the many faults and negligence of Albina proximately causing said fire and said loss and damage and expense, Albina should be required to indemnify and save libelants harmless from any claimed general average contribution, salvage and special charges which may be asserted against them by reason of the premises.

Libelants' contentions are denied by Luckenbach, with the exception of the libelants' charges of fault and negligence against Albina, which contentions Luckenbach admits, except Item 10 of paragraph IV.

Libelants' contentions are denied by Albina, with the exception of the libelants' charges of fault and negligence against Luckenbach, which contentions Albina admits.

Contentions of Luckenbach Steamship Company,
Inc., Against Libelants

I.

Luckenbach contends that it did not breach its contract of carriage in any way, and relies in full upon all defenses in its bills of lading.

II.

Luckenbach contends that the fire and consequent damage were not caused by any fault or negligence on its part, but were caused solely by the fault and negligence of Albina.

III.

Luckenbach contends that the fire was caused without any design or neglect of Luckenbach, and Luckenbach claims the benefit of §4282 of the Revised Statutes; §182, Title 46 U.S.C. (the fire statute); and Clause 13 of the bills of lading embodying said statute.

IV.

Luckenbach contends that it is absolved from any liability for the fire by Clause 17 of the bills of lading, to the effect that it shall not be liable for any loss, damage or delay arising from "fire from any cause on land or on water, whether on board ship, on cars, lighters, in warehouse or on wharves or elsewhere; water or steam or chemicals used for the purpose of extinguishing fire."

V.

Luckenbach contends that in the event of any liability being found against it, any resulting dam-

ages are restricted by Clause 18 of the bills of lading, limiting the value of the goods to \$500 per piece or package, and in no case more than invoice value of the goods at point of shipment; and in case of shipments moving under released rates as provided in the tariff, liability shall not exceed the provision of such released rates, and that the shipper was given the choice of rates as provided in said Clause 18, and did not declare any different valuation as provided in said clause.

VI.

That notwithstanding the removal of the section of the main fire line in the engine room, there were other alternate pipelines of the fire system still usable.

VII.

That it entrusted the welding operations to Albina, an experienced ship repair contractor, expert in welding, and Albina had a duty not to proceed with the work unless and until it was reasonably safe to do so and to perform the work in a reasonably skillful, efficient and safe manner; that Luckenbach had a right to rely, and did rely upon Albina's performing its said duties; and that the proximate cause of the fire and damage to cargo was Albina's breach of its said duties.

Libelants deny the foregoing contentions of Luckenbach.

Contentions of Luckenbach Steamship Company,
Inc., Against Albina Engine & Machine Works,
Inc.

I.

Luckenbach contends that the sole proximate cause of the fire was the fault and neglect of Albina.

II.

Luckenbach contends that Albina breached its contract to perform the welding operations with the reasonable skill and safety of an expert.

III.

Luckenbach contends that Albina was guilty of a breach of its contract in proceeding with the welding at all with hazardous cargo near the forward ladder.

IV.

Luckenbach contends that Albina, without limitation of the foregoing, breached the contract in the following particulars:

(a) It boarded the vessel and commenced said welding operations without any notice to any of the ship's officers that it was about to do so, and without ascertaining the condition of the fire control system on the ship.

(b) It performed the welding in No. 5 hold in the presence of hazardous articles, without any water of any kind available, except a small can containing perhaps 2 gallons, which was entirely inadequate to put out any fire, and without any other means of extinguishing a fire.

(c) It did not adequately screen off the welding operations from adjacent cargo, or in any way adequately isolate them from the cargo, and permitted and allowed welding sparks to ignite the cargo in said hold.

(d) It failed to properly supervise the welding operations.

(e) It failed to maintain a fire watch.

(f) It failed to have present during welding operations a competent attendant equipped with not less than one four-pound CO₂ fire extinguisher at hand and ready for instant use.

(g) It failed to have a suitable fire hose with nozzle attached, connected with a nearby fire hydrant, and to test the same before and during the welding operations and ready for instant use.

(h) In the aforesaid acts of neglect and breach of contract it violated §16-2527 of the Ordinances of the City of Portland.

V.

Luckenbach contends that Albina repaired the damage to the ship caused by the fire voluntarily and without any order to do so, and at its own cost and expense, and that its conduct in that regard is an admission of its liability for that and all other damage caused by the fire.

VI.

Luckenbach contends that as a result of the fire it has suffered loss, damage and expense, and has

been damaged, in the sum of \$41,172.71, and that it should have a decree against Albina awarding to Luckenbach said damages, with interest from the date of the fire; and contends further that if it should be compelled to pay the libelants any damages, Luckenbach should recover over against Albina as indemnity the amount so paid, or, at the least, should have contribution; and that Albina should not recover anything upon its claim and cross-libel, in which it seeks to recover \$28,933.89, the cost of the repairs which it made upon the S. S. Robert Luckenbach, and that Luckenbach should have such other, further and different relief as the proofs may warrant and the court may deem just.

The foregoing contentions of Luckenbach are denied by Albina.

Contentions of Albina Engine & Machine Works, Inc.

I.

Luckenbach failed to make the S. S. Robert Luckenbach tight, staunch, strong and ready for the performance of its intended services in the following particulars, among others:

1. Said vessel was generally unseaworthy.
2. Said vessel was manned by an insufficient number of officers and crew, several being unqualified as to rating, most being unacquainted with

essential equipment aboard, and many being uninstructed as to their respective duties.

3. No alternative fire control system was established after a section of the main fire line was removed.

4. The ship's fire line was not connected to a readily accessible fire hydrant on the adjacent dock.

II.

Luckenbach, through its officers, agents, employees and personnel, was guilty of negligence in the following particulars, among others:

1. It failed to establish an alternative water connection after a section of the main fire line had been removed.

2. It failed to report to all hands that the fire system was inoperative.

3. It failed to establish a connection to the ship's fire line from a nearby fire hydrant on the adjacent dock, although such connection could have been simply and conveniently made.

4. It failed to provide a suitable and operable fire hose with nozzle attached at the time and place where it knew welding was to be performed.

5. It failed to provide members of the crew, properly instructed, to stand by the fire control equipment at the time and place where it knew welding was to be performed.

6. It failed to inform Albina's welding crew, or anyone connected with Albina that the main fire line was inoperative and that no alternative water connection had been made.

7. It failed to notify the Coast Guard as required by U. S. Coast Guard regulations that welding was to be performed in No. 5 hold.

8. It failed to take any or all of the precautions required by U. S. Coast Guard regulations under the circumstances existing prior to and at the time of the fire.

III.

The unseaworthiness of the vessel, the faults and negligence, both personal and otherwise, of Luckenbach, constituted the sole proximate causes of the fire and the loss and damage to the cargo.

IV.

Albina contends that it made repairs to the S. S. Robert Luckenbach following the fire at the special instance and request of Luckenbach; that the reasonable value of such repairs is \$28,933.89, which Luckenbach undertook and agreed to pay; that no part of said sum has been paid although demand for payment has been made and that by reason thereof Luckenbach is presently indebted to Albina in the sum of \$28,933.89.

V.

Albina contends that any issue as to Albina's liability to indemnify libelants for some indefinite general average contribution, salvage or special

charges which libelants may or may not be called upon to pay, and which libelants may or may not be under a duty to pay, is remote, speculative, contingent and not presently within the jurisdiction of this honorable Court, but, in the event the Court should determine that such issue is within its jurisdiction and that such issue should be resolved herein, Albina expressly denies that it is under any such liability to so indemnify and hold libelants harmless.

The foregoing contentions of Albina are denied by Luckenbach.

Physical Exhibits

Certain physical exhibits have been identified and received as pretrial exhibits, the parties agreeing, with the approval of the Court, that no further identification of exhibits is necessary. In the event that said exhibits, or any thereof, should be offered in evidence at the time of trial, said exhibits are to be subject to objection only on the grounds of relevancy, competency and materiality.

Libelants' Exhibits

1. Transcript of testimony, Merchant Marine Investigating Section.
2. File of City Fire Marshal.
3. Copy of 46 CFR 142.20-02.
4. Certified copy of Police Code, City of Portland, Ordinance No. 16-2527.
5. Reprint Federal Registry No. 246, Dec. 20, 1957.

6. A-F Bills of lading covering shipments for which recovery is sought.

7. Sealed exhibit for impeachment purposes only.

Exhibits of Luckenbach Steamship
Company, Inc.

21. The bills of lading for the carriage of the goods.

22. Statement of Luckenbach's expenses and damages, with supporting bills attached.

-(Note: Luckenbach's statement of damages is omitted at this time since that question is reserved.)

23. Coast Guard testimony.

24. Diagram or blueprint of No. 5 hold.

26. Water can.

25. A-B Photo, Number 5 hole.

Exhibits of Albina Engine &
Machine Works, Inc.

41. Copy of 46 CFR, Section 95.01-1.

42. Copy of 46 CFR, Section 146.27-1.

43. Abstract from 46 CFR.

44. Survey Report on Ship Damages.

45. Survey Report on Cargo Damages.

It is expressly agreed between the parties that the issue of damages shall be reserved for subsequent determination by this court in the event the parties are unable to agree upon the amount of damages sustained by the libelants.

The parties hereto agree to the foregoing pre-trial order, and the court being fully advised in the premises,

Now Orders that upon trial of this cause no proof shall be required as to matters of fact hereinabove specifically found to be admitted, but that proof upon the issues of fact and law between libelants and Luckenbach Steamship Company, Inc., and Albina Engine & Machine Works, Inc., as hereinabove stated shall be had, and it is further

Ordered that this pretrial order does not supersede the pleadings, and that in accordance with the long established practice in admiralty, both this order and the pleadings may be freely amended at any time to promote justice in the correct determination of these causes.

Dated at Portland, Oregon, this 6th day of January, 1960.

/s/ JOHN F. KILKENNY,
United States District Judge.

Approved:

/s/ JOHN GORDON GEARIN,
Of Proctors for Libelants.

/s/ ERSKINE WOOD,
Of Proctors for Luckenbach
Steamship Company, Inc.

/s/ ALAN H. JOHANSEN,
Of Proctors for Albina En-
gine & Machine Works, Inc.

Lodged December 3, 1959.

[Endorsed]: Filed January 6, 1960.

[Title of District Court and Cause.]

In Admiralty

Civil Nos. 9997, 10001, 10002, 328-59, 335-59, 336-59

AMENDMENTS TO PRETRIAL ORDER

Additional Charge of Negligence
Against Luckenbach

“14. It failed to promptly notify the Portland Fire Department.”

Additional Charge of Negligence
Against Albina

“11. It failed to promptly notify the Portland Fire Department.”

Dated this 7th day of January, 1960.

/s/ JOHN F. KILKENNY,
United States District Judge.

[Endorsed]: Filed January 7, 1960.

[Title of District Court and Cause.]

Civil Nos. 9997, 10001, 10002, 328-59, 335-59, 336-59

OPINION

Kilkenny, Judge:

Libelants were the owners of certain goods, wares and merchandise which had been delivered by them

in good condition to Luckenbach Steamship Company, Inc., a corporation, (herein called "Luckenbach"), for delivery to Portland, Oregon, in consideration of agreed freight and in accordance with the terms and conditions of certain bills of lading. Said property was loaded as cargo aboard the S. S. Robert Luckenbach, an ocean-going cargo vessel owned and operated by Luckenbach, and while aboard said vessel in Portland, Oregon, received damage by fire or water while said vessel was undergoing repairs performed and to be performed at said city by respondent, Albina Engine & Machine Works, Inc., a corporation, (herein called "Albina"). While said vessel was undergoing said repairs, a fire broke out aboard the vessel, which, together with the water used to extinguish the same, caused the damage and loss of said cargo. At said time and place a section of the main fire line aboard the vessel had been removed. The fire aboard the vessel started as a result of sparks from welding by acetylene torch, which was performed by employees of Albina, who were performing the repairs within the scope of their employment.

1. Libelants claim cargo damage against both Albina and Luckenbach, charging Luckenbach with failure to provide a seaworthy vessel and with negligence, and charging Albina with negligence.

2. Luckenbach charges Albina with negligence and claims the benefit of what is commonly known as "The Fire Statute," Title 46, U.S.C.A. §182, and Clause 13 of the bills of lading of libelants, embody-

ing such statute. Luckenbach claims indemnity against Albina for any amount that it might have to pay libelants, or contribution to that amount, and is claiming damage against Albina for loss, damage and expense occasioned by the fire.

3. Albina is claiming indemnity or contribution against Luckenbach for any amounts it may have to pay libelants and is also charging Luckenbach with its bill for repairing the fire damage to the ship.

In the forenoon of April 2, 1958, the Chief Officer of the S. S. Robert Luckenbach reported to Luckenbach's Port Engineer, Mr. Sterling, that one of the lower rungs was missing from the iron ladder located in the after part of No. 5 hold, and he engaged Albina to install a new rung. At that time the lower portion of the after ladder, No. 5 hold, was obscured by cargo consisting of metal conduit pipe stowed in the after part of No. 5 hold. The repair work to be done on the after ladder was a welding job and could not be done while longshoremen were working in the hold. The longshoremen ceased work for their meal hour at 6:00 p.m. and some time thereafter, Albina's three-man welding crew entered No. 5 hold of the ship to do the welding job. Said crew consisted of Smith, a boilermaker foreman who was in charge, and two welders. The ladder in No. 5 hold requiring repair by replacement of a missing rung was not, in fact, the after ladder in that hold, as had been reported to Sterling, but in fact was the forward ladder in that hold. Sterling, having left the

ship, did not know this. Between the time Sterling gave the order to repair the after ladder and the time the welders entered the hold, the cargo had been removed from around this ladder and around the forward ladder, sufficiently exposing both so that it was evident to the welders which ladder needed repair. Without further instructions, they proceeded to work on the forward ladder. Forward of this ladder and extending clear across the width of the ship was cargo consisting of several tiers of bales of burlap bags on the bottom and cardboard cartons of construction paper on top. The distance between this cargo and the forward ladder was from two to four feet. Smith placed two plywood "walk-boards" end to end up against the cargo to serve as a screen or partition between it and the ladder. On the port side of the ladder he stood a carton or box next to and up against the plywood partition and extending aft from it, substantially at a right angle. In addition, he laid a one-inch board athwartships against and along the bottom of the plywood partition. The place where Albina's men stood to perform the welding job on the forward ladder was clear of cargo. On the deck at this place was a "landing pad" which was a wooden floor covering the deck at this place used for landing cargo being loaded into the hold, thus protecting the deck from damage. Around the outside of this landing pad was a ramp which sloped slightly to the deck, the slope of the forward edge of this ramp being toward the forward ladder. The missing ladder rung was the second or third one up from the bottom. A temporary rung

was in position there and was removed by Smith. In the No. 5 hold there was a can, variously estimated to hold from three to five gallons, containing drinking water for the longshoremen, who had left it in the hold when they quit work. The can contained little water. The welding crew brought no fire-fighting or fire extinguishing equipment of any kind on board the ship. Albina's welder, Larson, struck an arc and began to burn off a small gob of metal where the old rung had been. Immediately, a spark or sparks or a piece of burning metal flew over the top of the partition and/or fell onto the forward ramp of the landing pad or upon the deck itself, rolled or bounced under or through the plywood partition, setting fire to the highly inflammable burlap bags.

Sterling, Luckenbach's Port Engineer, was the man in charge of repairs for respondents. The aft ladder which he ordered repaired was located approximately 40 feet from the forward ladder, which was being repaired when the fire occurred. Sterling had ordered the cargo removed from around the aft ladder. He had left the ship about 3:00 p.m. and did not return until after the fire had caused the damage.

Prior to the events in question, Albina, on orders from Sterling, had removed a section of the main line pipe, which supplied water to the ship's hydrants on deck. The pipe was removed for the purpose of repair. To make up this deficiency the

Chief Engineer of the vessel was ordered to connect the ship's water system with a Portland city water hydrant on the adjacent dock. An assistant engineer was instructed to perform this task, but neglected to do so. At the time of the fire, water was not available on the deck to be used in extinguishing the fire. The fire department was on the scene within a short period of time, from 3 to 15 minutes, and had water in the hold within 4 minutes after arrival. The fire in No. 5 hold so heated the bulkhead between the No. 4 and the No. 5 holds that there was danger of fire occurring in the No. 4 hold and the fire department poured water into that hold also, thus damaging additional cargo. Some of the ship's plates and the bulkhead between the No. 4 and the No. 5 holds were buckled and the ship sustained other damage, at least some of which was repaired by Albina. Sterling did not know of the failure to connect the city fire hydrant to the ship, nor that any welding was to be done on the forward ladder in No. 5 hold.

It is clear that Albina, in using the torch for the cutting and welding of metal in the presence of highly inflammable burlap bags, was undertaking an extremely dangerous operation. Even if Albina, by deliberate design, had attempted to create a hazardous fire condition, it could have made no improvement. The use of an acetylene torch, with its attendant heat and great danger, under these conditions, was nothing less than wanton conduct. No doubt, it created a situation where the rule of abso-

lute liability should apply. Restatement of the Law, Torts, Absolute Liability, chap. 21.

However, I am not compelled to decide whether that doctrine is applicable to the facts in this case. The overwhelming weight of the evidence supports the libelants and Luckenbach's contentions that Albina was guilty of negligent conduct in using the acetylene torch under the conditions and circumstances then and there existing. The degree of care required in any given situation is that commensurate with the danger involved. *Grand Trunk Railway Co. v. Richardson*, 91 U.S. 454; *Leach v. St. Louis-San Francisco Ry. Co.*, 48 F. 2d 722; *Brown v. Standard Oil Co. of New York*, 247 F. 303.

The only case cited by Albina in support of its contention that it was not negligent is *Rockwood & Co. v. American President Lines* (D.C.N.J. 1946) 68 F. Supp. 224. In the Rockwood case the fire was not discovered until 4½ hours after the acetylene burning operation was completed. The operators of the acetylene torch had with them a pail of water and a fire extinguisher, in addition to the asbestos sheeting which they used in building the protection wall. There was nothing in the case which would show that any spark or sparks entered the trunk in which the fire occurred. This case is not in point.

Although there is abundant evidence of lack of due care in other particulars as specified by libelants against Albina, said respondent contends that Code of Federal Regulations, Title 46, §142.02-20, a Coast

Guard regulation prohibiting repairs being undertaken in holds containing dangerous articles where such repairs involve welding or burning, is not applicable. Albina takes the position that this regulation applies only to a vessel and not to an independent contractor working with such equipment aboard the vessel. I think otherwise.

Likewise, Albina contends that §16-2527 of the Police Code of the City of Portland requiring a suitable fire hose with nozzle attached, connected with a fire hydrant and a test made before burning or welding takes place on any vessel in the Port of Portland is unconstitutional, in that the field is preempted by Federal statutes and the Coast Guard regulations. I find no conflict between the regulations and the ordinance. The regulation, 46 CFR 146.01-12, specifically recognizes the right of local authorities to adopt regulations not inconsistent with those of the Coast Guard. Albina was negligent and caused the fire under specifications numbered 1, 2, 3, 4, 5, 6, 7 and 8.

Generally speaking, libelants urge that Luckenbach is liable on three general theories: (1) that it did not act as a reasonable, prudent person should have acted after it had knowledge of the fire; (2) that it acted in violation of said Code of Federal Regulations and said ordinance; and (3) that it did not remove the highly inflammable cargo from around the forward ladder. In this connection we must keep in mind that Sterling ordered the repair to the ladder located in the after section of No. 5

hold and that the repair was undertaken at the forward ladder of No. 5 hold, around which was stowed some highly inflammable material and which was some 40 feet distant from the aft ladder.

Luckenbach contends that even though the statute and the ordinance might have been violated, there was no evidence that the managing officers or agents of the vessel were guilty of "personal negligence" and that the vessel is excused by reason of the provisions of the fire statute, Title 46, U.S.C.A. §182 and Clause 13 of the bills of lading of each of the libelants, which incorporates the fire statute. The fire statute reads as follows:

"No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner."

Libelants claim that the fire statute does not apply under the facts of this case and that the negligence of Luckenbach in failing to provide water, in ordering the repairs in the hold where inflammable material was present, and in failing to remove the inflammable material was a contributory cause of the fire. The evidence is undisputed that Sterling, the engineer in charge of repairs, ordered the repairs at one place and without further instructions Albina made the repairs at another, where a great fire

hazard existed. No such hazard existed at the place where the repairs were ordered. The evidence is undisputed that Sterling ordered the water lines connected with the hydrant on the dock. Failure to carry out this order was due to the negligence of one of the subordinates on the vessel. Radovich, the Marine Superintendent, did not arrive on the vessel until 6:10 p.m. At that time, he did not know that the repairs were being made on a ladder other than pursuant to the original instructions. It was only after he saw the blaze in the hold that he recognized that repairs were being made on the other ladder. He immediately did everything within his power to control the fire. So, even though Radovich could be viewed as a managing officer or agent in charge of the vessel, the fire had been "caused" when he first noticed it. Under the evidence in the case I am of the opinion that Radovich was a subordinate and that his duties were very limited. The evidence is undisputed that he had nothing whatsoever to do with the repair of the ship. Here, the owner was repairing the system and, through its managing officer, had given specific orders to have equipment substituted and in place and ready to control a fire. Before the owner is liable under the fire statute, the fire must be caused "by the design or neglect of the owner." The word "design" contemplates a causative act or omission, done or suffered wilfully or knowingly by the shipowner. The *Strathdon*, 89 F. 374, 378. Of course, there is no evidence of the fire in this case being caused wilfully or knowingly by

the shipowner or any of its officers or employees. The fire was caused by Albina.

The "neglect of the owner" mentioned in the statute means the owner's personal negligence, or in case of a corporate owner, negligence of its managing officers and agents as distinguished from that of the master or subordinates. *Consumers Import v. Kabushiki Kaisha*, 320 U.S. 249, 252. It is well settled that a shipowner is not liable for damages resulting from fire unless the libelant proves that the cause of the fire was due to "design or neglect" of the owner and the burden is on the libelant to prove that the neglect of the owner did cause the fire. *The Strathdon*, supra; *Fidelity-Phenix Fire Insurance Co. v. Flota Mercante Del Estado*, 5 Cir. 1953, 205 F. 2d 886, 887. Upon showing that the cargo was damaged or destroyed by fire, Luckenbach brought itself within the exemption provided by the fire statute, unless the libelants go forward and show that the fire was caused by Luckenbach's personal neglect. *Hoskyn & Co. v. Silver Line*, 2 Cir., 1944, 143 F. 2d 462, 463; *The Cabo Hatteras*, 5 F. Supp. 725, 728. Unseaworthiness does not prevent the application of the fire statute. *Earle & Stoddart, Inc., v. Ellerman's Wilson Line, Ltd.*, 287 U.S. 420; *Hoskyn & Co. v. Silver Line*, supra. Neither is the benefit of the fire statute conditioned upon compliance with the safety act. 46 U.S.C.A. §463; *Fidelity-Phenix Fire Insurance Co. v. Flota Mercante Del Estado*, supra; *Automobile Insurance Co. v. United Fruit Co.*, 2 Cir., 1955, 224 F. 2d 72, 75.

Libelants claim that the statutory fault doctrine established by *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, applies to proof of the cause of a fire resulting in cargo damage. The Courts have held otherwise. *Automobile Insurance Co. v. United Fruit Co.*, supra. Some cases would indicate a contrary conclusion. However, the statement on the subject in such case is not supported by the authorities cited. For example, *Verbeeck v. Black Diamond Steamship Corp.*, 2 Cir., 1959, 269 F. 2d 68, 71.

It is contended that Judge Fee's decision in *American Mail Line, Ltd. v. Tokyo Marine & Fire Insurance Co., Ltd.*, 9 Cir., 1959, 270 F. 2d 499, casts liability on Luckenbach. There is no similarity in the facts of these cases. In the *American Mail* case, the captain of the vessel knew of the fire in the hold on August 20th. He continued to load cargo on that day, the 21st and the 22nd of August and on the 24th of August commenced the use of a smothering agent to control the fire, which had then been burning for four days. During all of that time the managing officers of the corporation knew of the existence of the fire. Judge Fee upheld the finding of the trial court that the owner failed to use reasonable precaution or to take measures which a reasonably prudent person would have taken to control the fire after it knew of its existence. Judge Fee held that the fire statute had no application for the reason that liability was being fixed by reason of the failure of the owner to control the fire. Here, immediate action was taken to control the fire. In

this case, there is no evidence that anyone failed to use reasonable diligence after the start of the fire.

I am convinced that the fire statute is applicable and that Luckenbach and its superior officers were guilty of no negligence which caused the fire. Without question, the fire was caused by Albina. No one in charge for Luckenbach, nor any of its superior officers, had anything to do with the welding operation on the forward ladder. Albina claims that Radovich was a superior officer and one whose negligence would bind the ship. Nowhere does Radovich testify that he had any power or authority with reference to the repairing of the ship. In the direct question which was propounded to him, (Ex. 23, p. 101), he testified as follows:

“Q. Do you have any association with repairs to be effected by contractors or otherwise?”

“A. No.”

He testified that he arrived on the ship on the evening in question at about 5 or 10 minutes after 6:00 p.m. and that he went aboard for the purpose of observing the loading and unloading of the cargo. He had been directed to have some of the deep tanks in 'tween deck No. 2 hatch discharged of cargo and cleaned relative to some ship repair work to be done. He was to have this work done by 8:30 a.m. in the morning. He didn't know whether any welding repair work was required on that repair job. (Ex. 23, p. 103). He had nothing whatsoever to do with the repair of the ship or with the removal of any cargo from around the ladder.

We now approach the question of Albina's liability to Luckenbach for the damage to the vessel caused by the fire. At the same time, we should consider the claim of Albina against Luckenbach for the reasonable value of the repairs which Albina made to the vessel after the fire. The "fire statute" which relieved Luckenbach from liability to libelants is of no help to Luckenbach on this problem. However, Albina impliedly contracted to do the repair job in a skillful, safe and workmanlike manner. In such case there is liability on the independent contractor to the owner of the vessel. *Weyerhaeuser Steamship Co. v. Nacirema Operating Co., Inc.*, 355 U.S. 563; *Crumady v. The Joachim Hendrick Fisser*, 358 U.S. 423; *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corporation*, 350 U.S. 124. Where a shipowner and an independent contractor enter into a service agreement, the former is entitled to indemnification for all damages sustained as a result of the independent contractor's breach of its warranty of workmanlike service. *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corporation*, *supra*; *Weyerhaeuser Steamship Co. v. Nacirema Operating Co., Inc.*, *supra*. The right to indemnity exists even though the vessel was unseaworthy at the time. Where the negligence of the independent contractor brings the unseaworthiness of the ship into play, such action on the part of the independent contractor amounts to a breach of workmanlike service and since that warranty was for the benefit of the vessel, the vessel is entitled to indemnity from the contractor. *Crumady v. The Joachim Hendrick Fisser*, *supra*.

Albina argues that these cases should be distinguished in that they involve personal injuries to a stevedore, rather than property damage to a vessel. I am unable to distinguish the logic or the soundness of the reasoning in the stevedoring cases from what should be the logic and the soundness of the reasoning in arriving at a proper conclusion in this case. The decisions in the stevedore cases control. I see no distinction between liability by way of indemnity and liability by way of direct damage or compensation.

Other legal questions raised by the briefs, with the possible exception of General Average, would seem to be academic.

Libelants are entitled to a decree against Albina for damage to cargo. Luckenbach is entitled to a decree against Albina for damage to the vessel. Albina is not entitled to a decree against Luckenbach for indemnity or for the value of services rendered in repair of the ship, other than those services performed and material furnished, if any, to Luckenbach for repair work independent of the fire in question.

Proctors may draft a supplemental pretrial order outlining the issues on the question of damages. The question of offset in favor of Albina, on its repair bill against Luckenbach, shall be included in such supplemental order. Appropriate findings may be presented by proctors for Luckenbach and libelants after a decision on damages.

Dated March 10, 1960.

[Endorsed]: Filed March 10, 1960.

[Title of District Court and Cause.]

Civil No. 9997 and Consolidated Cases

(Civil Nos. 10,001, 10,002, 328-59, 335-59, 336-59)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Findings

I.

All the above cases were, by consent of the parties, consolidated for trial and decree.

II.

The Court adopts its Opinion, dated March 10, 1960, as Findings and Conclusions, and makes the following additional Findings and Conclusions:

III.

The fire was not caused by the design or neglect of Luckenbach.

IV.

It was caused by the gross negligence of Albina, as more particularly to be stated.

V.

Sterling was Luckenbach's port engineer, based in Seattle, with authority over repairs to Luckenbach's vessels in the Pacific Northwest, subject, however, to overruling authority in New York.

VI.

Radovich was a mere subordinate employee of Luckenbach. He was not a managerial officer. His functions were confined to Luckenbach's dock in Portland, where he arranged for the loading or discharge of cargo. He reported to his superiors in the Portland uptown office. He had nothing to do with repairs. Repairs were under Sterling.

VII.

Sterling did not know that the forward ladder was to be repaired. He left the ship between 3:00 and 4:00 in the afternoon, supposing that it was the after ladder that was to be repaired. The cargo near this after ladder was metal conduit, and it had all been discharged when the welders came aboard. It was 40 feet away from the forward ladder. Had the welding been done there, there would have been no fire.

VIII.

Sterling had made arrangements with the ship's chief engineer to hook up the ship's main fire line to the city water hydrant on the dock and so supply adequate water pressure to the ship while the section of the fire line was at Albina's yard for repairs. Sterling relied on the chief engineer to do this, and had a right to so rely. His delegation of this task was proper. It was not performed, due to the failure of a subordinate engineer.

IX.

Sterling knew nothing of the fire until his return

to the ship in the evening, at which time the Portland Fire Department was in control.

X.

Radovich had nothing to do with the repairs to the ladders. And there is no proof anywhere in the record that he knew anything about the removal of the section of the fire line, or the arrangements to supply substitute water from the dock hydrant. The Court finds that he did not.

XI.

The first Radovich knew that Albina's welders were aboard, or that a fire might be in No. 5 hold, was when he looked into that hold, shortly after 6:00 p.m. and saw sparks. Thereafter he acted with haste and dispatch in alerting the mate on watch, and calling the Portland Fire Department.

XII.

Neither Sterling nor Radovich was privy to the cause of the fire or its progress.

XIII.

The fire was caused solely by the gross negligence of Albina in the manner in which it attempted to do the welding. There was no welding at the after ladder, so that is eliminated. The welding at the forward ladder could have been safely done, if proper and usual precautions had been taken. There was ample space—between 2 and 4 feet between

the ladder and the cargo, in which to erect a fire-proof, insulating screen, or curtain; notice to the ship's officers could have been given by the welders when they came aboard that welding was about to commence, and to have water ready; a hose either from the ship (if notice had been given) or from the dock could have been led into the hold with water pressure in it; one or more fire extinguishers could have been at hand. The requirements of the Portland City Ordinance regarding welding could have been complied with. If any of these precautions had been taken, there would have been no fire. Instead, none was taken. The only thing relied on was a can of longshoremen's drinking water left in the hold, which, of course, was utterly inadequate.

XIV.

Albina is a ship repair yard of many years' experience, and an expert in welding aboard ships.

XV.

Luckenbach employed Albina as an expert to do this welding and relied on Albina to do it safely and in a workmanlike manner, and had a right to so rely. It was a proper delegation.

XVI.

Albina at no time made any objection to Luckenbach that the conditions in the hold were dangerous or risky. On the contrary, it accepted those conditions without protest, and went ahead.

XVII.

There was no contract or understanding between Luckenbach and Albina, or any obligation, that Luckenbach would have its fire line in readiness and available during welding, and Albina in no way relied on it when it undertook the job.

Conclusions

I.

The fire was not caused by the design or neglect of Luckenbach within the meaning of the Fire Statute, U.S.C.A., Title 46, Sec. 182, R.S. 4282.

II.

Luckenbach is not liable to libelants for the cargo loss, damage, or expense, or otherwise.

III.

Even if liable, it would have a right to indemnity from Albina for all sums it might be compelled to pay to satisfy its liability.

IV.

Libelants have a right to recover from Albina all their damage and loss and expense caused by the fire.

V.

Luckenbach has a right to recover from Albina all its loss, damage and expense caused by the fire, and it is not liable to Albina for any contribution, indemnity or otherwise.

VI.

Albina does not have any right to collect its bill for repairing the fire damage to the ship.

VII.

An interlocutory decree should be entered accordingly.

May 16, 1960.

/s/ JOHN F. KILKENNY,
District Judge.

[Endorsed]: Filed May 16, 1960.

United States District Court
District of Oregon

Civil No. 9997 and Consolidated Cases

(Civil Nos. 10,001, 10,002, 328-59, 335-59, 336-59)

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation,

Libelant,

vs.

The S.S. ROBERT LUCKENBACH, Her En-
gines, Tackle, Apparel and Furniture; LUCK-
ENBACH STEAMSHIP COMPANY, INC., a
Delaware Corporation, and ALBINA EN-
GINE & MACHINE WORKS, INC., an Ore-
gon Corporation,

Respondents.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Corporation,

Cross-Claimant,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent.

LUCKENBACH STEAMSHIP COMPANY,
INC., a Delaware Corporation,

Cross-Claimant and Cross-Respondent,

vs.

ALBINA ENGINE & MACHINE WORKS, INC.,
an Oregon Corporation,

Cross-Respondent and Cross-Libelant.

INTERLOCUTORY DECREE

These consolidated causes having come on for trial on the segregated issues of liability, the libelants appearing by John G. Gearin, their proctor; Albina Engine & Machine Works, Inc., appearing by Gunther F. Krause, its proctor, and Luckenbach Steamship Company, Inc., appearing by Erskine Wood, its proctor, and the Court having heard the evidence and arguments of counsel, and having considered the briefs, and having made Findings of Fact and Conclusions of Law, and now being duly advised;

It Is Considered, Ordered and Decreed:

1. That in this Decree Hershey Chocolate Corporation, Longview Fibre Company and Waltham Bag and Paper Company, Zellerbach Paper Company and Northwest Grocery Company, Peyton Bag Company, W. E. Finzer & Company, and Hearst Publishing Company, Inc. (Pejepscot Paper Division), are collectively referred to as "libelants"; the S.S. Robert Luckenbach, etc., and Luckenbach Steamship Company, Inc., are referred to as "Luckenbach"; and Albina Engine & Machine Works, Inc., is referred to as "Albina";

2. That libelants have and recover nothing from Luckenbach, and their libels, insofar as they are against Luckenbach, are hereby dismissed;

3. That libelants have and recover of and from Albina their damages, to be later determined;

4. That Luckenbach have and recover of and from Albina its damages to be later determined;

5. That Albina have and recover nothing from Luckenbach either on its repair bill or by way of indemnity or contribution, or otherwise; its cross-claims and cross-libel are hereby dismissed;

6. That the prevailing parties shall have and recover their costs and disbursements, to be taxed in the Final Decree.

Dated May 16, 1960.

/s/ JOHN F. KILKENNY,
U. S. District Judge.

[Endorsed]: Filed May 16, 1960.

[Title of District Court and Cause.]

Civil No. 9997 and Consolidated Cases

(Civil Nos. 10,001, 10,002, 328-59, 335-59, 336-59)

NOTICE OF APPEAL

Notice is hereby given that Albina Engine & Machine Works, Inc., respondent, cross-respondent, and cross-libelant, in the above-entitled causes, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the interlocutory decree of the United States District Court for the District of Oregon entered in the above-entitled cause, Civil No. 9997, and consolidated cases, Civil Nos. 10001, 10002, 328-59, 335-59 and 336-59, entered on May 16, 1960.

KRAUSE, LINDSAY &
NAHSTOLL,

/s/ GUNTHER F. KRAUSE,
Proctors for Respondent, Cross-Respondent and
Cross-Libelant Albina Engine & Machine
Works, Inc.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 27, 1960.

[Title of District Court and Cause.]

Civil No. 9997 and Consolidated Cases

(Civil Nos. 10,001, 10,002, 328-59, 335-59, 336-59)

BOND FOR COSTS ON APPEAL

Whereas, Albina Engine & Machine Works, Inc., respondent, cross-respondent and cross-libelant, has appealed to the United States Court of Appeals for the Ninth Circuit from the interlocutory decree made and entered in this cause on the 16th day of May, 1960, as set forth more fully in said respondent's, cross-respondent's and cross-libelant's Notice of Appeal; and the said respondent, cross-respondent and cross-libelant and St. Paul Fire & Marine Insurance Co., a surety company duly authorized to do business in the State of Oregon, hereby consenting and agreeing that in case of default or contumacy, on the part of respondent, cross-respondent and cross-libelant, or its surety, execution may issue against their goods, chattels and lands in the sum of Two Hundred Fifty Dollars (\$250.00);

Now, Therefore, it is hereby stipulated for the benefit of whom it may concern that the stipulators undersigned are jointly and severally bound in the sum of Two Hundred Fifty Dollars (\$250.00), conditioned that respondent, cross-respondent and cross-libelant shall pay the costs, if any, awarded by the United States Court of Appeals for the Ninth Circuit upon the appeal of this cause.

Dated at Portland, Oregon, this 31st day of May,
1960.

ALBINA ENGINE & MA-
CHINE WORKS, INC.,

/s/ ALAN H. JOHANSEN,

Of Proctors for Respondent, Cross-Respondent and
Cross-Libelant Albina Engine & Machine
Works.

[Seal]

ST. PAUL FIRE & MARINE
INSURANCE CO.,
Surety;

By /s/ ADDISON P. KNAPP,
Attorney-in-Fact.

Countersigned:

JEWETT, BARTON, LEAVY &
KERN,

By /s/ ADDISON P. KNAPP,
Resident Agents.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 1, 1960.

United States District Court
District of Oregon

Civil No. 9997

(Also: Civil Nos. 10,002, 335-59, 336-59 and 328-59)

HERSHEY CHOCOLATE CORPORATION, a
Delaware Corporation,

Libelant,

vs.

The S.S. ROBERT LUCKENBACH, etc., et al.,

Respondents.

January 6, 1960

Before: Honorable John F. Kilkenny, Judge.

Appearances:

MR. JOHN GORDON GEARIN,
Of Proctors for Libelant.

MR. ERSKINE WOOD,
Of Proctors for Respondent Luckenbach
Steamship Company.

MESSRS. GUNTHER F. KRAUSE and
ALAN H. JOHANSEN,
Of Proctors for Respondent Albina En-
gine & Machine Works.

TRANSCRIPT OF PROCEEDINGS

The Court: Are the parties and the Proctors ready for trial in Hershey Chocolate vs. Luckenbach, Civil 9997, and consolidated cases?

Mr. Gearin: The libelants and each of them are ready, your Honor, upon the understanding that the pretrial order has been approved by the Court.

The Court: Proctors for respondents?

Mr. Wood: Luckenbach is ready, your Honor.

Mr. Krause: Albina is ready.

Mr. Wood: I don't believe the pretrial order has been signed.

The Court: The pretrial order is before the Court, and I have this question to ask with reference to it. Is there any reason that the pretrial order does not supersede the pleadings?

Mr. Gearin: The pretrial order in its present form, your Honor, was put in that form at the insistence of Mr. Wood. He will have to answer that question. Personally, I have no objection to the pretrial order superseding the pleadings.

The Court: Mr. Wood, what do you have in mind in particular as the reason the pretrial order does not supersede?

Mr. Wood: I would really prefer Mr. Krause answer that.

The Court: We will have Mr. Krause answer it, then.

Mr. Krause: The rules of the District Court have been, according to my understanding, drafted giving the attorneys the [2*] option to have the pretrial order supersede the pleadings or to supplement them. This case is one where there are five or six suits combined. I haven't done a great deal

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

of work on the cases. It has been handled by Mr. Johansen, and I am not entirely familiar with all of the issues. I think they are all right. But we felt in this case because of the fact that there were quite a number of cases we should be able to rely upon the pleadings if it became necessary to do so. There are libels, cross-libels, interpleaders, and about every way of getting parties into a case that there is in admiralty.

The Court: In other words, Mr. Krause, there is nothing specific. Of course, what the Court is interested in here is if there is some real, specific reason for not superseding the pleadings I would like to have that pointed up at the present time so that I may have it in mind during the course of the trial.

Mr. Krause: There is nothing special, your Honor, excepting that in view of the number of cases involved and the different claims and defenses between the parties, particularly between Mr. Wood and ourselves, we would prefer not to have the pleadings superseded. As far as we are concerned, whether the pretrial order supersedes or doesn't, we would agree that any party should be permitted to amend the pretrial order at any time either for the purpose of bringing in additional exhibits or even for the introduction of new issues. If that [3] were the understanding, then we would be prepared to go ahead with the pretrial order.

The Court: I think that is already part of the pretrial order here as prepared.

Mr. Krause: Yes; it is.

The Court: I will sign the order as it is presently drafted. The difficulty we have under the rule where the pretrial order does not supersede, of course, is where we have a jury involved. As you gentlemen can well recognize, the Court might be at a loss to understand the issues where you reserve issues in the pleadings and also issues under the pretrial order.

The order will be signed.

Mr. Gearin, do you want to proceed?

Mr. Gearin: Yes, your Honor, if I may. Has the Court received the memorandum that we delivered yesterday in this case? I think if your Honor has had the opportunity of reading it, I would dispense with any opening statement at this time.

The Court: I might say that I have not had an opportunity to read it, Mr. Gearin.

Mr. Gearin: Very well.

(Opening statements were made to the Court by Proctors for the respective parties, and thereafter the following occurred:)

The Court: You may proceed.

Mr. Gearin: We would like to introduce in evidence, your [4] Honor, our Pretrial Exhibit No. 1, which is a copy of the transcript of the investigation. There is attached on the first page a paper that we have prepared, which is an index of the witnesses and the pages in the transcript where their testimony appears.

Mr. Wood: May I ask a question? Are those diagrams that one of the witnesses drew attached to that?

Mr. Gearin: They are. Those are the official Coast Guard exhibits.

The Court: Mr. Wood, you are familiar with that exhibit?

Mr. Wood: Yes; I am.

The Court: Do you have any objection?

Mr. Wood: No objection whatever.

The Court: Mr. Krause?

Mr. Krause: I have none.

The Court: The exhibit is admitted.

(Transcript of Testimony before the United States Coast Guard, Merchant Marine Investigating Section, above referred to, was received in evidence as Libelants' Exhibit 1.)

Mr. Gearin: The second exhibit of the Libelants, your Honor, is Exhibit No. 2, which is the original City of Portland, Oregon, District Agent's Fire Report.

The Court: Mr. Wood? [5]

Mr. Wood: I have never seen that, but I don't think I have any objection to it. May I reserve an objection until later?

The Court: You continue, and then we will have a recess here shortly and you can examine that, Gentlemen.

Mr. Gearin: Our third exhibit, your Honor, is a copy of the regulation contained in the Title 46, Code of Federal Regulations, Section 146.20-02.

Mr. Wood: No objection to that.

Mr. Krause: That is the Federal Code?

Mr. Gearin: Yes.

Mr. Krause: We have no objection to it.

The Court: Exhibit No. 3 is admitted.

(Copy of the section of the Code of Federal Regulations above referred to was received in evidence as Libelants' Exhibit 3.)

Mr. Gearin: Exhibit No. 4 is a copy of the Police Code of the City of Portland—

Mr. Wood: Is that the one about waterfront facilities?

Mr. Gearin: No. This says, "When any welding or burning is in progress on any vessel," and so forth.

Mr. Wood: Is that the waterfront facility one?

Mr. Gearin: No; it is not.

Mr. Krause: We object to that. That is one of these local regulations that vary the uniformity of the Maritime Law. We [6] don't think that the City ordinances have anything to do with the management and control of a vessel when the Coast Guard—that is the United States, through the Coast Guard—has made all the regulations that have anything to do with the vessel. They have entirely occupied that field. The City of Portland does not make any regulations that are going to be binding on an Admiralty Court or binding on the parties.

Mr. Gearin: Our answer to that, your Honor,

is that Page 9 of the pretrial order, Paragraph V, contains this recital:

“At all times there were in full force and effect the following regulations:

“City Ordinance of the City of Portland, Section 16-2527, passed by the City Council of the City of Portland.”

Now, with regard, your Honor, to whether or not this applies in admiralty, in 46 Code of Federal Regulations, 146.01-12, to which reference is made on Page 19 of our brief, the Federal regulations do not pre-empt this field, because the Code of Federal Regulations regarding the Coast Guard regulations which we have here provide,

“Nothing in the regulations in this chapter shall be construed as preventing the enforcement of reasonable local regulations now in effect or hereafter adopted when such regulations are not inconsistent or in conflict with the provisions [7] of the regulations in this act.”

Our position, your Honor, is that the Police Code, which probably your Honor has not read, has certain mandatory directions relating to the precautions to be taken when welding is to be performed which are applicable to this case. They are not in conflict with the Code of Federal Regulations, but merely require certain precautions for welding and requires certain fire extinguishers and fire hoses to be in effect. I think, your Honor, first of all you ought to read the Police Code.

The Court: Exhibit 4 will be admitted. If Coun-

sel have any opposition, in any memorandum that you may file you may cite such authorities as you may have that might show the ordinance is not applicable.

(Copy of Section 16-2527 of the Police Code, above referred to, was received in evidence as Libelants' Exhibit 4.)

LIBELANTS' EXHIBIT No. 4

Police Code

Section 16-2527. Burning and Welding. When any welding or burning is in progress, on any vessel, a suitable fire hose, with nozzle attached, shall be connected with a nearby fire hydrant and a test must be made, before any such welding or burning commences and occasionally while it is still in progress and said hose shall remain, ready for instant use, at least for one hour after any such welding or burning has been completed. A test must be made from time to time during the progress of any such operations. A competent attendant, equipped with not less than one, four pound, CO₂ fire extinguisher, at hand and ready for instant use, shall be on hand and ready to act during each such welding or burning operation. If during any such operation, there will be a transmission of heat, through a bulkhead or above or below a deck where any such work is being done, a fire watch shall be maintained on both sides of the bulkhead or deck. Special attention shall be given where any such

operations take place, near a refrigerator compartment or ventilator from any gaseous hold or compartment.

Received in evidence January 6, 1960.

Mr. Gearin: Now, your Honor, there is testimony at Page 50 by a Witness Beeler, a witness called by the Coast Guard, who is a member of the Coast Guard, and he testified on Page 50 that the Luckenbach Terminal, where the repairs were being made, at the time of this fire was "a waterfront facility."

Based upon that testimony we offer into evidence Libelants' Exhibit No. 5, which is a copy or a reprint of the Federal Register applying, which is 33 Code of Federal Regulations, Section 126.15, which likewise the parties have [8] stipulated in Paragraph V on Page 9 of the pretrial order as being in full force and effect at the time of this fire.

There is testimony in this case, your Honor, by the Coast Guard that this Federal reprint was sent to Luckenbach prior to the fire because of repeated violations of this regulation in Portland. That is on Page 53 of the testimony of Lieutenant Beeler, testifying for the Coast Guard.

The Court: What is the general nature of the regulation?

Mr. Gearin: The regulation, your Honor, prohibits welding or hot work on waterfront facilities

except when approved by the Captain of the Port. There will be testimony in the case that the Captain of the Port was not advised of the fact that welding was going to be taking place, and there was also testimony by Mr. Beeler of the Coast Guard, on Pages 52 and 53 of the transcript, that had the Coast Guard been notified they would have had a representative of the Coast Guard at the scene and would have required that the vessel furnish a fire watch and take precautions.

The Court: Mr. Wood?

Mr. Wood: Yes. We object to that regulation about waterfront facilities, your Honor, because it is clearly irrelevant. No welding was done except on the ship. There wasn't any welding done on the dock. There is no question about that. A waterfront facility is, by the very regulations, defined as follows:

“A waterfront facility as used in this part [9] means all piers, wharves, docks, and similar structures to which vessels may be secured, and buildings on such structures or contiguous to them, and equipment and materials on such structures or in such buildings.”

Obviously, that does not refer to welding on a ship. It say “structures to which vessels may be secured.” I don't know why that is introduced at all.

The Court: Mr. Krause?

Mr. Krause: We object to it on the same grounds, your Honor.

The Court: Mr. Gearin, do you have anything more to say on that?

Mr. Gearin: No.

The Court: The objection will be sustained as to No. 5. It will be considered as an offer, though, of course, Mr. Gearin.

Mr. Gearin: Thank you. Your Honor, our next exhibits are Exhibits 6-A to 6-F, inclusive, being the bills of lading. We have a stipulation in the pretrial order to the effect that the goods were delivered aboard the vessel in apparent good order and condition. The bills of lading are offered only with the thought that they provide a basis for our contention that cargo may hereafter be compelled to respond in general average, and one of the issues as set forth in the pretrial order and discussed in our memorandum is whether or not Albina [10] would be required to indemnify cargo against a general average contribution. It is only offered for that purpose.

Mr. Krause: Isn't there another suit pending in that connection?

Mr. Gearin: That is the Longview Fibre case, which has not been consolidated. This offer has nothing to do with the Longview Fibre case, which is being held in abeyance pending this case, and it applies only to the particular cargo that is involved in this action.

Mr. Krause: I don't see how it can possibly come in at the present time. A general average contribution might be an assessment against cargo for the preservation of that cargo, if they had thrown

a lot of cargo overboard, for example, in order to save other cargo. There is nothing of that sort in this case that I know of, and I therefore can't figure out just why that should be in the case.

Mr. Gearin: This matter, your Honor, has to do with our contention as contained in the pre-trial order, our Contentions, Nos. VI, VII and VIII, having to do with the claimed right to indemnification in the event of any claim of general average contribution.

The Court: That exhibit will be admitted.

(The bills of lading above referred to were received in evidence as Libelants' Exhibits 6-A to 6-F, respectively.) [11]

Mr. Gearin: Your Honor, we have introduced the testimony on behalf of the Libelants. Also, I understand from one of counsel that the water can which is on the window sill is the water can that was in the hold.

Mr. Wood: No, it is not the actual can. It is one similar.

Mr. Gearin: It is one similar. We ask that that be received in evidence. It has a number on it, I think.

The Clerk: Exhibit 26.

The Court: That will be admitted.

(The water can referred to was thereupon received in evidence as Libelants' Exhibit 26.)

Mr. Gearin: I have one exhibit which is No. 7. That is a sealed exhibit for impeachment purposes

only, and we will, of course, make no use of that at this time. We have to retain that.

Now, your Honor, the pre-trial order contains a recital on Page 21 as follows:

“* * * that in accordance with the long-established practice in admiralty, both this order and the pleadings may be freely amended at any time to promote justice in the correct determination of these causes.”

In the memorandum which I have served upon opposing [12] counsel yesterday forenoon, I believe, and which we filed with the Court yesterday, we stated at that time that we proposed to amend the pre-trial order to charge an additional ground of negligence against the respondents, and each of them, in the particulars set forth on Page 27 of our memorandum, and which is based upon the testimony of Kenneth W. Post, Assistant Fire Chief, on pages 168 to 170 of the transcript, and the testimony of Cecil F. Roth, Battalion Chief of the Fire Department, on Page 187.

We ask that the pre-trial order be amended to charge the respondents with negligence in failing to properly report the fire to the Portland Fire Department.

With that statement, your Honor, and with the further statement that that is the specific evidence upon which we rely as related to the specific charges of negligence against each of the respondents, and that the statutory and case authority in support of our position is found in our trial memorandum, I don't think that any further argument is necessary

until your Honor has had a chance to review the testimony and to study the authorities.

With that we rest.

The Court: Mr. Gearin, what would be the language of the amendment which you propose?

Mr. Gearin: The language will be this, your Honor: In the pre-trial order we have contentions made against Luckenbach, [13] and in Paragraph III of our Contentions, which appear on Pages 10 and 11 of the pre-trial order, this will be a fourteenth charge of negligence, consisting of the words: "It failed to promptly report the fire to the Portland Fire Department."

The Court: Are you proposing a similar specification against Albina?

Mr. Gearin: Yes, your Honor, which will be in Paragraph IV of our Contentions, page 12, subdivision 11, consisting of the same words.

The Court: Do you have any objection to the amendment as to Luckenbach?

Mr. Wood: No, I think under the admiralty practice he is allowed to make it.

The Court: And you, Mr. Krause?

Mr. Krause: We have no objection.

The Court: The amendment will be allowed.

Mr. Gearin: The libelants and each of them rest, your Honor.

The Court: Mr. Gearin, I would ask you to prepare that amendment in proper form so that it can be submitted to opposing counsel and submitted to the Court so that we may attach it as part of the pre-trial order.

Mr. Gearin: I shall do so during the noon hour.

The Court: Yes. Mr. Wood?

Mr. Wood: We have some exhibits, your [14] Honor.

The Court: I think we will have a ten-minute recess. During that period of time you may check into that one exhibit.

(Short recess.)

Mr. Wood: I was about to offer the Luckenbach exhibits.

The Court: Yes, Mr. Wood.

Mr. Wood: Exhibit No. 23 is Bill's Recording Service transcript of the Coast Guard testimony.

Mr. Gearin: I understand, your Honor, from Counsel this is being offered as his is more readable than the copy which we have offered. Am I correct on that?

Mr. Wood: Yes.

Mr. Gearin: We have no objection.

Mr. Krause: I have no objection, your Honor.

The Court: Admitted.

(The transcript of testimony before the United States Coast Guard, above referred to, was received in evidence as Respondent Luckenbach's Exhibit 23.)

RESPONDENT'S EXHIBIT No. 23

Before The United States Coast Guard
Portland, Oregon

In the matter of:

PRELIMINARY INVESTIGATION TO IN-
QUIRE INTO DAMAGE SUSTAINED BY
FIRE ON BOARD THE S. S. ROBERT
LUCKENBACH, O/N 245, 923, WHILE
MOORED AT LUCKENBACH TERMINAL,
PORTLAND, OREGON, ON OR ABOUT 2
APRIL, 1958.

TRANSCRIPT OF PROCEEDINGS

Room 202, Lincoln Building,
Portland, Oregon—Thursday, April 3, 1958.

Met, at 1:20 o'clock p.m.,

Before: Carol L. Mason, Lieutenant Commander,
USCG; Senior Investigating Officer, Port-
land, Oregon.

Appearances:

ERSKINE WOOD, ESQ.,
1310 Yeon Building, Portland, Oregon;
Appearing on Behalf of Luckenbach
Steamship Company.

KENNETH E. ROBERTS, ESQ.,
Board of Trade Building, Portland, Ore-
gon;
Appearing on Behalf of Captain J. W.
Maitland, Master, S. S. Robert Luck-
enbach.

Respondent's Exhibit No. 23—(Continued)

GUNTHER KRAUSE, ESQ.,

Portland Trust Building, Portland, Oregon,
and

MR. E. STUART GRYZIEC;

Appearing on Behalf of Albina Engine &
Machine Works.

Proceedings

Lt. Cmdr. Mason: It is now 1320 Pacific Standard Time on this 3rd day of April, 1958, and these proceedings will come to order.

The following opening statement is made in compliance with existing regulations:

This preliminary investigation is convened under the authority of R. S. 4450, as amended, and the regulations promulgated pursuant thereto, to inquire into the damage sustained by the S. S. Robert Luckenbach, official number 245 923, which occurred on or about 2 April, 1958, while moored at Luckenbach Terminal, Portland, Oregon. This investigation will attempt to determine the cause of the casualty to the extent ascertainable and when such information has been compiled in the form of a record, it will be used as a basis for making any recommendations as may be indicated for the prevention of accidents or casualties of the same or similar nature. The investigation will further determine whether there was any incompetence, misconduct, unskillfulness or local violation of navigation law on the part of any licensed officer, pilot,

Respondent's Exhibit No. 23—(Continued)
seaman, employee, owner, agent or operator of any of the vessels involved; or any person who may have caused or contributed to the casualty.

In accordance with 136.23-1, 46 Code of Federal Regulations, if, as the result of this investigation, there is evidence of criminal liability on the part of any person, such [3*] evidence will be referred to the U. S. Attorney General's Office for action and such further investigation as deemed necessary or required by that office. Section 136.13-1, 46 CFR, Sections A, B, C and D thereunder prescribe who will be afforded copies of this record of investigation, the expenses involved in obtaining same, and the method for making application.

This investigation will not fix civil responsibility nor is such intended by these proceedings.

Before beginning this investigation, I should like to state at this time that the particular parties who appear to be interested parties in this investigation would be the Master and crew of the S. S. Robert Luckenbach, and the owner and/or agents or both of the Luckenbach firm and also the Albina Engine and Machine Works, Portland, Oregon. It is my understanding that the attorneys now present have entered into a stipulation that they have no objection to each and all being present together during the testimony furnished by the various witnesses which will be called by the Government; and the Government has no such objection. Is that correct, Mr. Wood?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Respondent's Exhibit No. 23—(Continued)

Mr. Wood: That is correct.

Mr. Roberts: As far as I am concerned, that is correct. I don't know how Mr. Gryziec feels.

Mr. Gryziec: I will agree.

Lt. Cmdr. Mason: And we will now have appearances then for the [4] record.

Mr. Wood: I am Erskine Wood, 1310 Yeon Building, appearing for Luckenbach.

Mr. Roberts: Kenneth E. Roberts, 10th floor, Board of Trade Building, appearing presently for Captain J. W. Maitland, Master of the S. S. Robert Luckenbach.

Mr. Gryziec: E. Stuart Gryziec, Glens Fall Insurance Company; representing Albina Engine and Machine Works.

Lt. Cmdr. Mason: I will state at this time that if there are any questions regarding the procurement of a transcription of the testimony, I will be glad to answer those questions at any time after we adjourn. At the present time, it is not possible to state whether or not it will be necessary for the Coast Guard in their interests to transcribe the record. However, even though they may not, there are ways that it can be done for interested parties.

Are there any questions before we call the first witness?

(No response.)

Respondent's Exhibit No. 23—(Continued)

LESTER LAWRENCE SMITH

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. Would you please state your full name and address?

A. Lester Lawrence Smith, 1928 S. E. 130th, Portland. [5]

Q. And what is your occupation, Mr. Smith?

A. Boilermaker foreman.

Q. How long have you been employed in that occupation?

A. The biggest part of—I am going on sixteen years at Albina. I have been a leadman or a foreman most of the time.

Q. You are employed by Albina Engine and Machine Works?

A. Albina Engine and Machine Works.

Q. And are you aware that there is a representative of that firm present now representing you here?

A. Yes.

Q. Now, it is my understanding that you were aboard the S. S. Robert Luckenbach at the Luckenbach Terminal in Portland, Oregon, on yesterday's date, 2 April, 1958, is that correct, sir?

A. Yes, sir.

Q. When did you board the vessel?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

A. Approximately ten minutes to six.

Q. And what was the purpose of boarding?

A. To install a ladder rung in number five lower hold forward.

Q. What specifically would be your duty or work involved in the installation? Of this ladder rung?

A. Well, I was supposed to oversee the installing, is that what you mean?

Q. Well, was this installation to require welding?

A. Welding, yes.

Q. And—but your particular job was not that of handling [6] the welding equipment, was it?

A. No, sir.

Q. What then did you do, merely supervise the work?

A. Well, I had two men there and I had this one man—we didn't take a burning torch down in the hold. I had him cut the rung for length and brought it down and—— (interrupted).

Q. Now, before we proceed too far here, when you first boarded the vessel, you stated about ten minutes of six. That was in the evening?

A. Yes, sir.

Q. Were these other two men with you?

A. They were aboard ship, yes, sir.

Q. They were already aboard?

A. Well, either there or on the dock. They were there before I got there.

Q. I see. Now, who are these other two men?

A. One is Larson and Leo Riley—R-i-l-e-y.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

Q. And are they both employed also by Albina?

A. Yes, sir.

Q. I see. And when you went down aboard, did you take any equipment with you?

A. With me? No.

Q. Was there—— (interrupted).

A. Outside of—no, I didn't take any equipment myself, no.

Q. Had any plans been made for welding equipment to be furnished [7] for this particular job?

A. Yes, sir; we had a portable delivered on the dock.

Q. And was it on the dock when you boarded the vessel? A. Yes, sir.

Q. Were the wires from this equipment already rigged to the vessel, do you know?

A. No, sir.

Q. They were not? A. No.

Q. Now, when you went aboard, what did you do first? Did you contact the other two men?

A. I contacted them before they got there and afterwards, and I told the welder to string the welding lead down into number five lower hold.

Q. I see. Did you contact anybody on the ship who was a member of the ship's force, such as any of the ship's officers relative to this job?

A. No, sir.

Q. Now, you told him to go ahead and string the wire down into the hold. What did you do then? Did you proceed to the hold?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. I went down the hold myself.

Q. And was this number five hold?

A. Number five lower hold.

Q. I see. Now, when you went down there, what did you find? [8]

A. Well, I found that there was cargo at the forward end of the hatch, forward of the ladder, by approximately—this is approximate, I would say—between two and three feet forward of the ladder, was this cargo, and then there was a vacant space approximately ten feet where there was no cargo, where the bare landing was exposed.

Q. I see. Where was this in relation to the hold? To the port or starboard?

A. Well, the ladder is on the center of the hatch and the cargo was port and starboard—in other words, clear across the width of the ship.

Q. I see. Now, you noticed that there was a rung missing or broken on the ladder?

A. Yes; yes.

Q. What was it, missing or broken?

A. It was missing.

Q. It was actually missing? A. Yes.

Q. The entire rung from both sides?

A. The entire rung was out, yes.

Q. I see.

A. They had a temporary rung fixed in there.

Q. When you say a "temporary rung," was that the type that is hung from an upper rung—
(interrupted). A. That's right, yes. [9]

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

Q. —in a short ladder form?

A. Yes.

Q. That had already been rigged when you got down there?

A. Yes, sir.

Q. Now, did the other two men rig this wire from the welding equipment down into the hold?

A. I wouldn't want to say whether both of them did or not, no, but I know that Mr. Larson was one of them. Maybe Riley helped him. I am not positive.

Q. Now, were you in the hold when it was lowered down?

A. I was in the hold, yes, sir.

Q. I see. Now, someone lowered it down, in either event, and you know it was one of the two men that was with you?

A. Yes, sir.

Q. But when it was lowered, was there anything on the end of this wire?

A. I wouldn't swear to it.

Q. Electrode clips or anything of that sort?

A. I wouldn't swear whether he had the stinger hanging on it or not.

Q. I see. Would that require two wires separate or would it have been one lead with the two wires enclosed?

A. No, it would only be one lead. We weld a ground up on deck before the welding— (interrupted).

Q. I see, and then bring the welding lead down into the hold? [10]

A. That's right.

Q. I understand. Now, what originally or how

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

did you originally receive your orders to board this particular ship at this particular time for that repair?

A. Well, I don't know which I got it from first. I know that Mr. Dixon (phonetic) is the general foreman. He told me I had the job to do. Also Mr. Bailey. Mr. Bailey is the man that is actually the boss—— (interrupted).

Q. Is he shop foreman?

A. No, he's—I don't know, superintendent or what his title is, but the coordinator. In other words, he is the man that was handling this particular job.

Q. And both of those gentlemen advised you of this repair to be done?

A. Yes, of the repair which was to be done. Dixon—I don't know if he had been on the ship, but as far as that goes, he told me I had this job to do between six and seven.

Q. Oh, he did say that it was to be done between six and seven? A. Yes.

Q. Did he clarify why it was to be done at that particular time?

A. Well, no; he didn't clarify it, but—— (unfinished).

Q. Did you have any knowledge as to why you had to go aboard at that particular time?

A. Yes, my idea was because the longshoremen wouldn't be [11] working at that time.

Q. I see.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

A. They were off between six and seven.

Q. In other words, that would normally be the longshoremen's dinner hour or change of shift?

A. The change of shifts.

Q. I see. All right, now, getting back to the wire that was let down into the hold, did anyone else come down into the hold then with you?

A. All three of us were down there.

Q. Well, now, that's—the other two came down after the wire was lowered into the hold?

A. It's hard to say now. Maybe one of them may have been down in the hold with me at the time.

Q. I see. You are not too sure?

A. I wouldn't swear to it, you know, I—— (interrupted).

Q. But in either event, we now have the three men down in the hold with the wire down there?

A. Yes, sir.

Q. This would be about what time, would you estimate? A. It was very shortly after six.

Q. And had the longshoremen—— (interrupted).

A. They had left.

Q. ——stopped work?

A. They'd left. [12]

Q. Let me ask you this: Had they left at the time you boarded the ship at ten minutes of six?

A. Yes, sir.

Q. They had? A. Yes.

Q. Was it dark in the hold at this time?

A. No.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

Q. It was not. Were there lights on down there or were you just receiving the light from sunlight through the open hatch?

A. The hatch was open.

Q. The hatch was open.

A. All the way down to the bottom. The 'tween deck was open and part of the main deck.

Q. All right, now, what happened next, as you saw it. Did they hook up the electrode to the wire, or what did happen?

A. No, of course, it was hooked up and as I say, I seen this cargo and figured I would take the precautions. This ladder rung was fairly low—come about chest high on me.

Q. Indicating chest high on you or approximately four feet?

A. Between four and five feet, I would say.

Q. That would be above the upper level of the cargo, would that be right? The cargo on which you were standing?

A. There was no cargo. I was standing on no cargo.

Q. You were standing on no cargo?

A. On the landing pad itself. At this particular spot, there [13] was no cargo and the cargo was forward of this, and— (interrupted).

Q. Well, I am speaking— (interrupted).

A. —I had taken what they call pallets, I believe—or not pallets, but these—maybe someone can advise me of what they call them—these plywood

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

boards that are approximately four to five—walking boards. I took two of those and leaned them up against the cargo, both sides of the ladder, and then they had some case goods of approximately the same square footage. I stood one of those up to make a box around this ladder so any sparks that fell, I figure it would hold, and then I took what I thought was an added precaution and put a one inch board next to the plywood, you know, so as to make it more of a tight joint, so that there wouldn't be any sparks go through. This welder—I tried the rung in there and it seemed to be just a trifle too long. There was a little stub of the weld stuck out to where it was keeping me from getting—the rung was long—or was short enough, if it wasn't for this old weld from the old rung, and I had the welder start to melt a little bit of this weld off—— (interrupted).

Q. Now, when you speak of the "welder," to whom do you refer? A. Larson.

Q. Larson?

A. Yes. I asked him to melt a little of that weld off to where I could get the rung in. He no more than struck the arc, [14] actually, that the sparks, I seen them roll towards the plywood. So I told him to hold up for a minute—pulled the plywood back, and there was flames. I had a bucket of water there and I threw it on, but it just took off in between the bales, to where I couldn't get the water to it by pouring it on. I couldn't—— (interrupted).

Q. What were these bales, do you know?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. Burlap.

Q. Burlap? A. Yes.

Q. Now, I want to be sure that I have this absolutely correct, Mr. Smith. Directly in front of the ladder where you were standing and where the welder was standing—— (interrupted).

A. Forward of the ladder.

Q. Well—— (interrupted).

A. It would be forward of us, yes, sir.

Q. Forward—you would be standing just abaft the ladder. The ladder would be in front of you?

A. That's right.

Q. Were you standing on the deck—on the tank tops?

A. On the—not the actual tank top; the landing pad, yes, sir.

Q. The landing pad. There was no bale of burlap beneath you there? [15] A. No, sir.

Q. And no other cargo beneath you there?

A. No, sir.

Q. I see. And that area was approximately how large, would you say, where—— (interrupted).

A. Between the two bunches of cargo? I would say approximately twelve feet.

Q. In width? A. Yes, sir.

Q. And about how much fore and aft?

A. No, width—width—the full width of the hatch.

Q. The full width of the hatch, port and starboard? A. That's right.

Q. But now I am speaking of fore and aft, how much?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. Well, I was going to say, approximately twelve feet.

Q. Oh, both ways? A. No.

Q. Twelve foot square? A. No, sir.

Q. Well, you are not making yourself clear then to me, Mr. Smith.

A. Yes; yes—forward of the hatch, from port to starboard shell. In other words, approximately forty-five feet.

Q. I am going to hand you a piece of paper, Mr. Smith, and ask you if you will just draw an outline of that (paper handed). [16] Now, if you will just draw a sketch showing the outline of the cargo hold—of the entire cargo hold, and then within that area, if you would show by dotted line, the cargo hatch?

A. Yes, that will give you your 'tween deck, too.

Q. And then at the appropriate end, if you would just mark FWD for forward, meaning forward end of the ship. And now, if you would indicate where the ladder is located and draw an arrow to it and just write "ladder." That's right. Now, if you will draw there, using a pencil, the outline of where there was no cargo—in other words, where the bare deck is exposed.

A. (Witness drawing diagram.)

Q. Now, that width from port to starboard, I believe you stated was approximately twelve feet?

A. Approximately, yes.

Q. And that would indicate the full width of the ship as you have it there, isn't that right?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. That's right; that's right, sir.

Q. Oh, then that's not twelve feet?

A. No, twelve feet fore and aft.

Q. Now, I understand. Now I have it. If you would sign that for me if you please?

A. (Signing diagram.) I don't know what the outer cargo was at the after end, just—— (interrupted).

•Lt. Cmdr. Mason: Let the record show that this sketch which has been marked Coast Guard Exhibit 1 is Mr. Smith's recollection of [17] the area of number five hold that was clear of cargo to the lower deck.

(Whereupon, the sketch above referred to was marked Coast Guard Exhibit 1.)

Q. Now, Mr. Smith, you said that when you pulled the plywood back, you found flames?

A. Yes, that's right.

Q. This was instantaneous? A. Yes, sir.

Q. Now, were these flames advanced or did they appear to be small and spread rapidly?

A. It spread rapidly—I mean, it wasn't a big blaze, but she was back in between the bales. I mean, the spark caught on fire and just seemed to spread back in between the bales.

Q. And then as I understand it, you took a bucket of water and threw it at the flames?

A. Yes, sir.

Q. How did that bucket of water happen to be

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

there?

A. Well, I had it—I brought it from the other end of the hatch. I will tell you what, it was one of these longshoremen—I started up after a bucket of water and there was a drinking can was there which was full, so I took it from the after end of the hatch and brought it up to—— (interrupted).

Q. So this wasn't actually a fire bucket, but it was merely something that you found that had water in it and that was convenient and near at hand?

A. Well, same thing. It had a large opening at the top, as far at that goes. [18]

Q. But you didn't observe this until you started to go up after—— (interrupted).

A. Oh, no; before I ever started to weld, I—— (interrupted).

Q. You had noticed that bucket?

A. No, it was after in the hatch—I started up after a bucket of water and I found this down below.

Q. Oh, I see. Now I understand.

A. Oh, I figured on having fire protection, you know. I mean, having the water there, just for safety.

Q. Again I am a little confused, Mr. Smith. You had brought no water down with you at the time you were ready to commence to work?

A. Yes, sir.

Q. You had?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. Water was there before the welder ever brought the stinger down.

Q. Was that this bucket that you referred to of water? A. Yes.

Q. That you ultimately used? A. Yes, sir.

Q. I see. And that was on the lower deck, or was it up on the 'tween deck?

A. No, it was right alongside of the ladder.

Q. Right alongside of the ladder?

A. It wasn't; I brought it up there, I mean, before we started [19] to burning.

Q. Before you started the burning?

A. Yes.

Q. I see. A. Before we started welding.

Q. Now, I take it from your past experience with the company that you have been doing this type of work—supervision of welding and so on in holds, at previous times, have you not?

A. Yes, sir.

Q. And has there been any practice or policy on your part relative to any safety devices or equipment that you keep at hand during these welding operations?

A. If I think there is any danger at all, I try to use every precaution.

Q. And did you feel that there was any danger existent for this particular operation?

A. No, sir; not after I had it fixed up, I mean.

Q. Even though the hold did have a cargo of burlap and paper?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. That's right, because I thought I had it boxed in.

Q. With the plywood that you spoke of?

A. With the plywood and this carton—which was a heavy pasteboard carton that I had made one end with.

Q. I see.

A. Now, wait—I said—I want to retract on this—about this being all cleared in this space. There was—— (interrupted). [20]

Q. Let the record show the witness is referring to what he had previously indicated to be the space clear of cargo on his sketch of number five hold.

A. Let me say that there were some scattered pasteboard cartons approximately six inches deep by four foot square laying in this area, scattered, not a solid cargo.

Q. I see.

A. And the deck was visible everywhere.

Q. Now, Mr. Smith, referring to your sketch, and placing yourself in the position abaft the ladder, when this spark which you speak of that ignited the fire flew, in what direction did it go?

A. Forward. It rolled forward.

Q. It rolled forward, but how did it get over the plywood? A. It rolled under the plywood.

Q. Under the plywood? A. Yes.

Q. Now, I see. How low was this piece of plywood that you had across the back of the ladder?

A. It was supposed to be tight against the deck.

Q. I see.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. At—around your hatch, which I know you are familiar with, they have these ramp—ramp plates so that they come up on the landing pad?

Q. Yes. Don't mark on the exhibit, please. [21]

A. All right. I'm not going to mark it, but I put this plywood from the landing pad up against the cargo, which made it as high—awfully close to as high as the ladder rung was, and—— (interrupted).

Q. The rung which you were going to weld?

A. That's right, but these sparks fell to the bottom and rolled on this ramp, like rolled underneath the—rolled underneath the plywood.

Q. I see. Then—— (interrupted).

A. This board that I had (indicating).

Q. Now, when you pulled that board back to look, did you pull it back to see whether that spark that had rolled under had gone out or did you pull it back because you noticed flames coming up?

A. No, I didn't notice any flames.

Q. I see. It wasn't until you actually pulled it back and then you saw the flames?

A. Pulled it back and then I seen them, yes.

Q. To your knowledge, was there any fire-fighting equipment rigged topside or any hoses led down in the hold at this time?

A. Let down in the hold—no, sir. There was a fire station right at the top of the hatch.

Q. When you speak of a fire station, you mean there was a hydrant up there?

A. Hydrant and hose. [22]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

Q. And a hose. Do you know if there was pressure to the hydrant?

A. No, sir. I didn't know up until—— (interrupted).

Q. There wasn't? But you didn't know at that time whether there was or wasn't? A. No.

Q. Was Mr. Bailey aboard at this time, do you know?

A. No, sir. Not that I know of. I say no, sir.

Q. As far as you know?

A. As far as I know.

Q. Now, after you threw the bucket of water that you had at the flames, what did you do next?

A. I hollered to Riley to get a fire hose.

Q. Where was Riley at this time?

A. He was in the hold. But I took off then, while he was getting a fire hose, I went down into the engine room and asked for water on the fire.

Q. Did you go up out of the hold?

A. Yes, sir.

Q. Out of the hatch and then down to the engine room? A. Yes, sir.

Q. And asked for water pressure on the fire mains, is that it? A. Yes; yes, sir.

Q. And then what?

A. Well, they didn't have any pressure on the fire mains, so I [23] went down and made three trips down to the engine room.

Q. I see. You came—— (interrupted).

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

A. I did tell the guard at the gangway to call the Fire Department.

Q. The guard?

A. In fact, I believe I told him before I went to the engine room the first time. Now, I wouldn't— (interrupted).

Q. Now, you said you went down to the engine room three times?

A. Yes. I thought that the man didn't know— (interrupted).

Q. Who did you see when you went down to the engine room, do you know? A. No, sir.

Q. Would you recognize him if you saw him again?

A. I think I would, yes. He was dark complexed.

Q. Do you know if he was the engineer on watch?

A. I do not know. I surmised that he was.

Q. Where did you find him—in the lower deck plates? A. No, he was— (interrupted).

Q. Upper grating?

A. He was coming up the ladder.

Q. I see, and what did you say to him?

A. I told him to get water on the fire line; had a fire in number five hold.

Q. You specifically told him there was a fire in number five [24] hold. What did he do then?

A. I don't know.

Q. Do you know whether he went back down the ladder, though, or did he follow you up?

A. No; no, he started down the ladder.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

Q. And then you came back up topside?

A. That's right.

Q. Found that there was no water pressure and went back down again?

A. That's right, and told him and then he went back checking again.

Q. Where did you find him when you went down the second time?

A. Actually, I couldn't say for sure.

Q. Was it the same man?

A. I can tell you one man I seen down there, but I was so darned excited that I wouldn't—
(interrupted).

Q. I see. You are not sure that the second and third time you went down that it was still the same man?

A. That it was the same man. The only thing I will say, the third time I went down there, this—well, he got rather perturbed because—well, I was perturbed because I couldn't get water on the line and he told me to check with someone up on deck; that he had everything running down there.

Lt. Cmdr. Mason: Interrupting for just a moment, let the record show that we have a new arrival to this investigation. If [25] you will make your appearance, sir?

Mr. Krause: Gunther Krause; representing Albina Engine and Machine Works, I guess.

Lt. Cmdr. Mason: Before proceeding here, Mr. Krause, I should advise you that the method of this

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

investigation at the present is in a preliminary stage, such that all of the attorneys have stipulated among themselves that they will agree to permit the others to be present at the testimony of each of their own witnesses; and I assume you have no objection to that similar stipulation?

Mr. Krause: I have none, no.

Q. Now, some time in the interim, when you were proceeding down to the engine room on these three successive times, you did notify the man at—on watch at the gangway to call the police, you are not sure just— (interrupted).

A. Not the police, the Fire Department.

Q. Or rather the Fire Department?

A. Yes.

Q. You are not sure just when?

A. Which trip, no, I am not.

Q. I see.

A. And after I couldn't get any water, I did go out and make sure that they called the Fire Department to see if they had arrived.

Q. I see. Now, can you recall approximately how much time [26] elapsed during this period that you made the three successive trips and return from the engine room?

A. Just about as fast as I could go back and forth, sir. I didn't spend—I mean, we couldn't do any good when we didn't have water.

Q. Would it be safe to assume then that you were, at this time, rather excited?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

A. Yes, sir.

Q. Did the gate watch or gangway watch ever advise you that he had notified the Fire Department?

A. No, I don't believe he did.

Q. Now, after your third trip to the engine room, what did you do next?

A. Waited for the Fire Department. It was too smoky then.

Q. Where did you wait? A. On deck.

Q. On deck?

A. Now wait a while. I did go out and try to contact Mr. Bailey and Mr. Dixon. I couldn't—I couldn't get ahold of Mr. Dixon so I called the warehouse and told them then to notify Dixon or Bailey that I had a bad fire.

Q. There was a lot of smoke coming out of the hatch? A. Yes.

Q. Did you notify the other two men to come out of the hold or were they still down there? [27]

A. Larson stayed down there while I was trying to get water on, until it got so smoky that he had to come out.

Q. And what happened to the other man?

A. He was up on deck at the valve.

Q. I see. Now, at any time, did you observe the mate on watch, or would you have recognized the mate on watch?

A. I didn't—not in this short time, I don't believe that I—— (interrupted).

Q. Didn't see him at all?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

A. Didn't see him at all.

Q. Was there anybody else at the hatch coaming at the time that you first came out to go down to the engine room for water? A. I don't know.

Q. Do you recall if there was anyone there when you came up the third time from the engine room?

A. I think there was men around there by that time. Well, I know there was men around there by that time, but I don't know who they were, whether they were talking—— (interrupted).

Q. Now, did you hear the ship's general alarm sound at any time? A. Yes, sir; yes, sir.

Q. You did? A. Yes, sir.

Q. When during the stage of your operations did you hear this sounded? [28]

A. Either the second or third time I went down.

Q. Went down where?

A. To the engine room.

Q. To the engine room? A. Yes.

Q. Did it come through loud and clear?

A. It seemed to, I mean—— (interrupted).

Q. You could hear it distinctly?

A. Oh, yes; from the engine room I could hear it distinctly.

Q. Did it sound prolonged, do you recall?

A. Well, I don't know—— (interrupted).

Q. Well, did it seem like it was just a short beep?

A. Oh, no; oh, no, no. It was a continuous ring.

Q. I see. And then after this sounded, was there any activity that you observed about the ship?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

A. Oh, there was—yes, there was—surely.

Q. Now, you state that you then waited topside after your third trip to the engine room, you waited topside because of the smoke and for the Fire Department to arrive?

A. Yes.

Q. In the meantime, while waiting, did you observe whether the ship's force rigged any fire-fighting apparatus?

A. I didn't notice.

Q. You didn't notice?

A. No. [29]

Q. Where were you standing specifically?

A. I was on the dock and back by the hatch there, trying to contact someone because the fire was out of my hands when I couldn't get down the hatch any more.

Q. Now, during all this time, was the electrical lead from the welding apparatus still— (interrupted).

A. I broke it from the welding machine, sir.

Q. You broke it from the welding machine, but with the leads still leading down the— (interrupted).

A. The dead lead; the dead lead.

Q. The deadman?

A. Yes.

Q. When did you break it, after your third trip to the engine room?

A. Oh, yes, I broke that after—in fact, the first fire wagons may have been there before I broke that.

Q. Approximately how long, if you recall, was it before the first fire wagons got there after you had

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

notified the gangway watch to call the fire department?

A. I wouldn't want to venture to say. It seemed like an awful long time, but it always does at a time like that.

Q. And then did you remain there throughout the period until the fire was reported out?

A. No, sir; I did not. I had men across the river and after the firemen were there and one thing or another, I went over to [30] check on that job and then I came back.

Q. Did Riley and Larson go with you?

A. I sent them back to Swan Island after the Fire Department was there for some time.

Q. I see. Now, is there anything further that you feel you would like to add or could add at this time that might help in this investigation that hasn't already been brought out by the questioning?

A. (Negative nod.)

Q. There is nothing further you have which you would care to say at this time?

A. (Negative nod.)

Q. All right, sir. Thank you very much.

Mr. Wood: Commander, I know there can't be any cross-examination here— (interrupted).

Lt. Cmdr. Mason: We will go off the record here for a moment.

(Off-the-record discussion.)

Q. Before excusing you as a witness here, Mr.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

Smith, handing you another piece of blank paper, would you indicate thereon, in the form of a sketch for us, exactly what these shields looked like that you used—the plywood shields in connection with safeguarding flying sparks (paper handed)?

(Sketch drawn.)

(Whereupon, the sketch above referred to was marked Coast Guard Exhibit 2.) [31]

Lt. Cmdr. Mason: Let the record show that the witness has drawn a sketch which is labeled Coast Guard Exhibit 2. Now, Mr. Smith, if you will describe that sketch in detail for us, please?

A. Now, here is a king post here—a solid stanchion.

Q. And if you will label it as such—"solid stanchion."

A. The ladder in turn fastens to that. I took one of these boards—plywood— (interrupted).

Q. Indicating a board to the right of the stanchion.

A. Of the stanchion—to the left of the stanchion, I put a board, and this is—this is— (interrupted).

Mr. Roberts: Port side?

A. —port side—that, I guess is a—it was one of these—this is that case I was telling you about that stood on edge there.

Q. Cardboard carton?

A. Yes. It had cargo in there—so I slide it up in there, straightened it up in there.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Lester Lawrence Smith.)

Q. I see.

A. Then I put some one inch lumber next to this thing.

Q. Next to the boards which are athwartships behind the ladder?

A. Here—similar to this, but this here is lined up against the—— (interrupted).

Q. Now, just a moment, Mr. Smith. Don't go too fast. We have to have this described on record, so make it clear so that the [32] tape will show it. Referring to the lower right-hand corner of the Exhibit Number 2.

A. Shows the position that I had both—— (interrupted).

Q. Of the plywood—— (interrupted).

A. ——of the plywood boards—— (interrupted).

Q. ——boards, adjacent to the stanchion and behind the ladder which you were to work on?

A. That's right.

Q. I understand.

A. With this strip of wood at the bottom of both pieces on port to starboard side of the ladder and I also had one-inch standing vertical, next to the—— (interrupted).

Q. Now, the strip of wood at the bottom was merely to prevent sparks from sliding under the backing board?

A. It was an extra precaution that I used. I thought that if any sparks did go down here, they would have to go under both of them.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Lester Lawrence Smith.)

Q. I see. Which, apparently in this instance it did.

A. Either that or it got in between here.

Mr. Wood: Got in what?

A. It got underneath here anyway, at least, where the burlap is.

Mr. Wood: I take it there wasn't any protection aft of this ladder?

A. There was nothing but this pad and I had about a ten foot [33] space in here (indicating).

Q. Now, one more question, Mr. Smith. You referred before to a certain number of trips you made to the engine room, and I want to clarify for the record—how many trips you did make?

A. Three trips.

Q. You did make three trips? A. Yes, sir.

Mr. Wood: Could I suggest one more inquiry? I was going to say—he tried to throw this bucket of water on the flame and for some reason he couldn't reach the flame.

A. All of the flame, sir.

Lt. Cmdr. Mason: I think he did clarify that. He said it didn't reach all of it. Some of it was spread back too far. Let the record show that the witness is excused.

(Witness excused.)

Respondent's Exhibit No. 23—(Continued)

LEO C. RILEY

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. What is your full name, sir?

A. Leo C. Riley.

Q. Is that R-i-l-e-y? A. R-i-l-e-y.

Q. And what is your address, Mr. Riley? [34]

A. 2051 S. E. 141st.

Q. And your occupation, sir? A. Welder.

Q. How long have you been employed in the capacity of welding? A. With Albina?

Q. Well, what has been the extent of your welding experience?

A. I started welding in 1942.

Q. 1942 and have you been working at it steadily since that time? A. Yes, sir.

Q. And how long have you been working for Albina? A. About five years.

Q. As I understand it, you were aboard the Robert Luckenbach, the evening of 2 April, 1958?

A. Yes, sir.

Q. Approximately what time did you board the vessel? A. At six o'clock.

Q. And what was the purpose—that's six p.m.?

A. Yes, sir.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. What was the purpose of boarding?

A. We had a ladder rung to fix in the lower hold of number five.

Q. Now, to make this brief, when you speak of "we," you mean yourself, Mr. Larson and Mr. Smith?

A. Yes, sir. [35]

Q. I see. And when did you first receive information that you would have this job?

A. While I was working at the yard, he come up at about 5:30.

Q. Who did? A. Mr. Smith.

Q. I see. At the Albina Yard? A. Yes, sir.

Q. And advised you that you had a job to do on the Robert Luckenbach?

A. Yes, sir.

Q. Did he at that time tell you that it would be at six o'clock or did he give you any set time?

A. Well, he said as soon as the longshoremen left.

Q. And did he indicate when that would be?

A. He said six o'clock.

Q. I see, and then you came aboard at six?

A. Yes, sir.

Q. Was the welding equipment on the pier at the time you arrived?

A. No, we pushed it on the pier.

Q. You pushed it on the pier? A. Yes, sir.

Q. You brought it up with you on a truck, did you?

A. No, it was in the Luckenbach building. [36]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. Oh, I see. Whose welding gear is that, do you know—is it yours—is it the Albina's?

A. It is Albina's.

Q. Belongs to Albina? Did you board the vessel alone or was Mr. Larson and Mr. Smith— (interrupted).

A. Mr. Larson was with me.

Q. Mr. Larson was with you? A. Yes.

Q. You both came at the same time?

A. Yes, sir.

Q. And then you pushed the welding gear out onto the pier and then what did you do next? Go aboard?

A. Well, we strung out the welding lead and went on board.

Q. I see, and then did you take the welding lead onto the ship? A. Yes, sir.

Q. And lower it down into number five hold?

A. Yes.

Q. And you already knew that this ladder rung was in number five, did you not? A. Yes, sir.

Q. Then, did you go down into the hold immediately after that? A. Yes, sir.

Q. Now, before going down into the hold, we will say between the time you boarded the ship and went down into the hold, did [37] you speak to anyone of the crew members aboard the ship, or advise anyone of the fact that you were going to start welding? A. No, sir.

Q. You did not? A. No.

Q. Do you know whether Mr. Larson did?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

A. I don't know.

Q. All right, now, you went down into the hold and to commence the welding. Was Mr. Smith down there at this time or did he come down later?

A. He was in the hold.

Q. He was already in there? A. Yes.

Q. Was he in there when you lowered the wire down? A. Yes, sir.

Q. Who actually lowered it—you or Mr. Larson?

A. Mr. Larson.

Q. I see, and you were standing by him, were you, at the time?

A. Well, I was pulling one end while he lowered it into the hold.

Q. I see, and then you both went down into the hold? A. Yes, sir.

Q. Did you have any safety apparatus with you?

A. Just a bucket of water. [38]

Q. Bucket of water. Had you taken that down, or was it already there?

A. Yes, it was there.

Q. It was there already? A. Yes.

Q. Where was that situated?

A. It was right alongside of where we was going to work.

Q. I see. Now, the area where you were going to work—was it bare to the deck? A. Yes, sir.

Q. And there was cargo though, on each side, is that correct? A. Fore and aft.

Q. Or fore and aft? A. Yes.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. And was the deck bare to the skin of the ship?
A. Yes, sir.

Q. All the way across to the skin of the ship?

A. Yes, sir.

Q. And then did you make any preparations then?

A. Well, Mr. Smith had put up a bulkhead—plywood bulkhead.

Q. Was this already up when you and Mr. Larson came?
A. Yes, sir.

Q. It was?
A. Yes.

Q. And what specifically was your job to be on this— (interrupted). [39]

A. Well, I was the fitter on this job. I was supposed to put this ladder rung in.

Q. And did you have the ladder rung with you?

A. Yes, sir.

Q. And did you fit it or did Mr. Smith fit it?

A. Well, Mr. Smith held it up there.

Q. And then who handled the torch or the cut of the electric— (interrupted).

A. Mr. Larson was the welder.

Q. He was the welder. And what did you do specifically, if anything?

A. Well, I was just standing by mostly.

Q. Standing by. I see. Is it a general practice for three men to go out on a job of this type?

A. It is at times.

Q. Was there a particular purpose for all three

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leo C. Riley.)

of you being there on this particular occasion, do you know?

A. Well, I think that the main purpose was because it was in such a hurry.

Q. It was in such a—how do you know it was— (interrupted).

A. Well, because the longshoremen were coming right back to work and they won't go in without the ladder rung being fixed.

Q. I see. In other words, the longshoremen—it is your understanding they would refuse to work unless all the ladder rungs were in place? [40]

A. Yes.

Q. I see. How did you happen to get this information?

A. Oh, this has been standing information for a long time.

Q. Now, while standing by, you undoubtedly had a good view of exactly what happened, did you not?

A. Yes, sir.

Q. Well, suppose you explain then in your own words just what did happen as you saw it?

A. Well, there was a little gob of weld where the old ladder rung was and I asked the welder to burn off this little gob. So he— (interrupted).

Q. That would be Larson?

A. Yes, sir. He struck the arc and of course, the sparks fell down on the deck and it bounced underneath the bulkhead or they rolled underneath, and we couldn't get at it to get it out.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. Now, would that be underneath the bulkhead forward from where—— (interrupted).

A. Forward, yes, sir.

Q. ——the welding was going on?

A. Yes. And then I climbed up on deck to get the fire hose and there was no water on the ship.

Q. Oh, you mean you climbed up on deck to get a fire hose just because the spark went under the bulkhead?

A. Oh, no, sir, it was starting to go. I mean, there is no stopping that piece of hemp once it starts burning. [41]

Q. It started to flame instantly, did it?

A. Yes, sir.

Q. I see, and did you see the flame?

A. No, I didn't see the flame, but they yelled for the fire hose, so I was going up after it right quick.

Q. Who is "they"?

A. Mr. Smith and Mr. Larson.

Q. They both yelled for a fire hose?

A. Yes, sir.

Q. So then you went up on deck to get a fire hose? A. Yes.

Q. And what did you do when you got up on deck?

A. Well, I grabbed the fire hose and started off to the hold with it.

Q. Where was the fire hose situated?

A. It was at the forward end of number five hatch.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leo C. Riley.)

Q. Up on a rack? A. Yes, sir.

Q. On the bulkhead?

A. Yes. Up on the deckhouse.

Q. I see. A. Masthouse.

Q. Did you pass it down into the hold?

A. Yes, sir.

Q. And what did you do then? [42]

A. Well, I turned the water on.

Q. And was there any water?

A. No, sir, there wasn't.

Q. There was no water? A. No water.

Q. What did you do then?

A. Well, they called the Fire Department.

Q. Who? A. Mr. Smith.

Q. Well, now, you have got Mr. Smith down in the hold.

A. Well, he came up right behind me, too.

Q. I see, and then did he go ashore and call the Fire Department? A. I don't know.

Q. I see, but as far as you know, the Fire Department was called—— (interrupted).

A. Yes.

Q. ——and you believe Mr. Smith had something to do with it? A. Yes.

Q. Is that correct? And what did you do in the meantime?

A. Well, just stood by, that's all we could do.

Q. Did you yell "fire" to anyone?

A. No, sir.

Q. Was there anyone about the decks that you

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

saw? A. Not at that time, no. [43]

Q. How about the gangway watch, did you see—— (interrupted).

A. Well, he was at the gangway.

Q. You did see him? A. Yes, sir.

Q. Did you call to him? A. Yes, sir.

Q. What did you say to him?

A. Just asked him—told him that there was a fire.

Q. And then you stood about the deck and waited and what happened after that?

A. Well, after that, we could only wait and hoped that the Fire Department got there in time to put it out.

Q. Did Mr. Smith stand there and wait with you or was he gone someplace else?

A. Well, he was trying to get the pump in the engine room to get some water. He would run down into the engine room then.

Q. I see. Where was Mr. Larson in the meantime?

A. Well, he was down in the hold with his hands on the fire hose.

Q. I see. Was smoke coming up out of the hatch by this time? A. Yes, sir.

Q. Fairly heavy?

A. Oh, not too heavy at that time, but it was coming up.

Q. I see. Did you look down?

A. Yes, sir. [44]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. Could you see flames at this time?

A. No.

Q. It was all strictly smoke? A. Yes, sir.

Q. Could you see Mr. Larson? A. Yes, sir.

Q. You could see him? A. Yes.

Q. Then what happened next? Did the Fire Department come? A. Yes, sir.

Q. Now, before the Fire Department came, did you hear the ship's alarm go off?

A. No, I certainly didn't.

Q. You did not? A. No.

Q. How long would you say it was before the Fire Department arrived?

A. Oh, I don't know. I wasn't keeping track of the time at that time.

Q. Half an hour? Thirty seconds? You can gauge approximately. A. Oh, fifteen minutes.

Q. Approximately fifteen minutes from the time you came out of the hatch?

A. Yes, sir; yes, sir.

Q. I see, and did you at any time hear the ship's alarm go [45] off? A. No, sir, I didn't.

Q. You didn't. Did you see Mr. Smith again?

A. Yes, sir.

Q. Was this after the Fire Department arrived?

A. Yes.

Q. It was, and where did you see him?

A. He was on deck, at that time.

Q. Back aft by number five? A. Yes, sir.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leo C. Riley.)

Q. Did Larson remain down in the hold until the Fire Department arrived?

A. No, sir, he came up before the Fire Department got there.

Q. He did and did you leave the hose down in there? A. Yes, sir.

Q. Did any other members of the ship's force arrive at the scene, do you know?

A. Well, they were around on deck— (interrupted).

Q. They were?

A. —at that time and they lifted the hatch cover off.

Q. I see. Did you recognize them as being members of the crew?

A. Well, yes, the engineer or something, I don't know who he was, but he was there.

Q. Was there anyone there in an officer's uniform? [46] A. Yes, sir.

Q. There was?

A. He told me that they had a section pipe out of the engine room.

Q. I see. The section of pipe out, so that was why the water couldn't be brought up to the fire hydrant? A. Yes, sir.

Q. Had you specifically asked him why there wasn't any water or—is that why he came out with this?

A. No, he volunteered the information when I said there was no water.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

Q. I see, and what was he doing in the meantime, if anything? A. Well, nothing.

Q. Now, did you remain aboard after the Fire Department came? A. Yes, sir.

Q. For how long?

A. Oh, I think about a half hour.

Q. Was the fire out when you finally left?

A. No, sir, it wasn't.

Q. And as I understand it from Mr. Smith, he finally told you to go back to the yard, was it?

A. To go to Swan Island.

Q. Go to Swan Island? A. Yes, sir.

Q. And then you left? [47] A. Yes.

Q. And Mr. Larson left with you, did he?

A. Yes, sir.

Q. While you were up on deck and before the Fire Department arrived, did you observe anyone taking any action toward extinguishing the blaze?

A. No, sir, nothing could be done at that time. We had no water.

Q. In other words, no one had started a bucket brigade of anything like that— (interrupted).

A. Oh, no, sir.

Q. —to your knowledge, anyway?

A. No.

Q. And you say that you at no time heard the ship's general alarm? A. No, sir, I didn't.

Q. Did there appear to be a lot of noise about the decks? A. Well, no more than usual.

Q. What I am trying to get at is whether or not

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leo C. Riley.)

a general alarm might have gone—sounded, and through the excitement or accompanying noise, you might possibly have just overlooked hearing it?

A. Well, sir, I don't know about that, but there was not too much noise. I mean, other than the men talking.

Q. I see. Is there anything further that you would care to add or you feel may throw light on this investigation which hasn't [48] been brought out by my questioning, Mr. Riley?

A. I don't think so, sir.

Q. Nothing at all that you feel might prove pertinent in this investigation?

A. No, sir, I don't think so.

Q. Are you a certificated welder?

A. Well, I was certified in the Vancouver Shipyards.

Q. Now, when you go out on these particular welding jobs, is it a—is there any form of general practice that you conform to for safety's sake, when you have to weld in cargo holds?

A. Well, we usually have a fire extinguisher or water in the holds.

Q. Like you did in this instance—— (interrupted). A. Yes, sir.

Q. ——a bucket? But is it a practice say for you to insist upon the ship's force rigging a fire hose in advance and having pressure to the nozzle?

A. No, sir.

Q. Pressure to the hydrant?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leo C. Riley.)

A. Not to my knowledge it isn't.

Q. There weren't any hand extinguishers nearby at hand, were there? A. No, sir.

Q. Have you ever been given any specific instructions by your employers relative to what you will do and what you will not do [49] with regard to safety against fire?

A. Well, they ask us to have a fire extinguisher; that's about all.

Q. They ask you to have a fire extinguisher?

A. Yes, sir.

Q. Or did they direct that you shall have a fire extinguisher?

A. Well, we should have one, yes.

Q. Then this bucket, I take it, in this particular instance, was to be a substitute for the fire extinguisher? A. Yes, sir.

Q. Are there—did you get those instructions with regards to having a fire extinguisher verbally or is there something in writing that you know of?

A. Not that I know of.

Q. I see—strictly verbal instructions furnished all welders?

A. Well, it is for everybody working on the waterfront, yes.

Q. I see. I have no further questions, Mr. Riley, and I want to thank you at this time for your appearance here.

(Witness excused.)

Respondent's Exhibit No. 23—(Continued)

(Whereupon, at 2:25 o'clock p.m., a recess was taken until 2:30 o'clock p.m., at which time the investigation reconvened, with the same parties heretofore mentioned being present.)

LEONARD LARSON

was called as a witness by the United States Coast Guard, and having first been duly sworn, was examined and testified as follows: [50]

Examined

By Lt. Cmdr. Mason:

Q. Would you state your full name and address, sir?

A. My name is Leonard Larson; 903 West 44th, Vancouver, Washington.

Q. Mr. Larson, is that L-a-r-s-o-n?

A. That's right.

Q. And what is your occupation, sir?

A. Welder.

Q. Are you a certified welder, sir?

A. Yes.

Q. And how long have you been employed in that occupation?

A. Since 19—I first started welding in 1930—acetylene welding.

Q. And as I understand it, you are presently employed by Albina? A. That's right.

Q. How long have you been employed by that firm, sir?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leonard Larson.)

A. I started to work for Albina in October the 15th, 1951.

Q. Approximately seven years? A. Yes.

Q. And is—does this work that you do involve frequent visits to merchant vessels for the purpose of welding? A. Yes, it does.

Q. As I understand it, you were employed on a welding task aboard the Robert Luckenbach, last night, the evening of 2 [51] April, 1958, is that correct, sir? A. That's right.

Q. When did you first board the ship, Mr. Larson? A. At about 6:30—between 6, 6:30.

Q. Between 6 and 6:30? A. Yes.

Q. What was your purpose of boarding?

A. We were repairing a ladder rung, number five hold.

Q. And how did you first receive the information regarding this job?

A. From the foreman, Lester Smith.

Q. And you are a member of some union, are you, Mr. Larson? A. Seventy-two—Local 72.

Q. That is of what, sir?

A. Boilermakers' Union.

Q. I see. Is Mr. Smith and Mr. Riley both members of the same Union? A. That's right; yes.

Q. Now, had Mr. Smith given you any specific instructions regarding this particular job? As to any particular time to be aboard, or?

A. He contacted me down at the Company's plant and told us what he wanted done and what

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

he wanted done on the—he wanted us to pull a—string a lead out to number five hold.

Q. To string a lead out? A. Yes. [52]

Q. In other words, a welding lead to number five hold? A. Yes.

Q. And what else? Anything else?

A. No, that's all he said at the present.

Q. Did he give you any particular time as to when to do this? A. To what?

Q. Any particular time to be aboard to do this?

A. No, he didn't, no.

Q. He didn't specify a time? A. No.

Q. Now, what time was this that he gave you these instructions?

A. It was, I would say, around 6—between 6 and 6:30.

Q. You stated this was while you were down at your plant? A. Yes.

Q. At Swan Island? A. Yes.

Q. And then what did you do then?

A. We—I got my car and went down to the Luckenbach Dock.

Q. In your own car? A. Yes.

Q. I see, and what did you do after you arrived at the dock?

A. I put my stuff aboard and got a welding—a portable welding machine backed up as close as I could to the ship.

Q. Was this welding machine in the shed at the time you arrived? [53]

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

A. Yes, it was; yes, it was.

Q. I see, and then you backed it up to the pier edge?

A. That's right.

Q. And Mr. Riley assisted you in this, did he?

A. Yes. And Smith, too.

Q. And Mr. Smith, too?

A. Yes.

Q. And then you went aboard and went down into the hold, did you?

A. That's right.

Q. And did you have the lead already down in before you went into the hold?

A. Yes, we always put the lead in before we went into the hold.

Q. And then was Mr. Smith already in the hold when you got there?

A. He was, yes.

Q. He was. When you got down there, did you make any preliminary preparations with respect to fire prevention?

A. Well, we had water there, yes.

Q. You did have water?

A. Yes.

Q. When you say that, what do you mean—a hose?

A. No, we had a bucket of water.

Q. Approximately how large was this [54] bucket?

A. Oh, I would say it would hold five gallons—four or five gallons.

Q. Four or five gallons, and was it full, do you know?

A. Yes, it was.

Q. So you did have, actually, four to five gallons of water on hand?

A. Yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

Q. Did you make any other preparations then, there?

A. Yes, we did. He had a piece of plywood there for fire protection.

Q. When you say "he," Mr. Smith— (interrupted). A. Yes.

Q. —already had this up? A. Yes.

Q. Now, as I understand it from previous testimony, Mr. Smith had rigged a piece of plywood athwartships, in other words, across, side to side, behind the ladder rung that you were to weld, is that correct? A. That's right; that's correct.

Q. And then he placed two other partitions facing aft on each edge of this piece of plywood, is that correct? A. That's right.

Q. Was that plywood also or was it cardboard, do you know? A. It was plywood.

Q. Plywood? [55] A. Plywood.

Q. Then as I understand it, down on the landing pad itself, which I understand to be directly below the ladder, he had also placed a couple of strips of—of wood on each side also, as an added precaution to prevent sparks from going under the plywood, is that right? A. That's right, yes.

Q. Do you know what size lumber this was that he used, or approximately?

A. Well, I would say it was—about twelve-inch boards.

Q. Twelve-inch boards?

A. Eight to twelve-inch boards.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

Q. Would they be the three-quarter inch thickness by twelve-inch width?

A. Yes, somewhere along in there.

Q. I see. Now, in the meantime, did you hook up your welding gear? A. I did, yes.

Q. And as I understand it, you were the one that was going to do the actual welding, is that correct? A. That's correct, yes.

Q. Mr. Smith—did he place the other rung in place for you to start welding?

A. Yes, he did; yes.

Q. Did he? [56]

A. The welding machine wasn't working to start with and Riley went out of the hold and then come back down again, and then we started to work.

Q. What did he go out of the hold for, to fix the welding machine? A. Yes.

Q. Now, what did you do first?

A. We—what I done first was—we were in—I held—Mr. Smith held the rung up there in place and I was trying to weld it. Just struck an arc; just started.

Q. Now, was it your intention, when he held that rung up there to actually tack the rung to it or were you about first to burn off the old weld?

A. I was just—I was just going to burn off a little spot on the old weld and he set it in there—set it in there and I was going to tack it—tack it in.

Q. Then he set it in and you were about to tack it in and what happened then?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

A. The fire caught.

Q. The fire caught? How do you know the fire caught? You had your mask on, didn't you?

A. I had my mask on, but he hollered at me.

Q. Oh, he hollered at you? What did he say?

A. He said, "Hold her," and that's all. I looked down there and saw the fire. [57]

Q. Now, when you looked down, where did you see the fire? In front of you—right on your side of the partition? A. Yes, it was.

Q. That there was a fire right there?

A. Yes.

Q. Did you or Mr. Smith or Mr. Riley pull the partition away to see if there was any fire behind it?

A. We pulled the partition away and threwed the water right on it as fast as we could.

Q. Who threw the water?

A. Mr. Smith threw the water.

Q. Mr. Smith threw the water? A. Yes.

Q. And did that tend to extinguish the flame at all?

A. It did, but it was—got too far under.

Q. Did the flames seem to move rapidly—did you observe it to move? A. Yes.

Q. It did? A. Yes.

Q. What happened next?

A. Well, they run up and got a—to get a fire hose out and then I stayed down there and tried to beat the fire out, but it just got away. I couldn't—

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leonard Larson.)

if I could have got—had water in the line, I could have got it. [58]

Q. What were you trying to beat it out with?

A. I was trying to put it out with my hand.

Q. I see. In other words, pulling the portions of burning matter out? A. Yes.

Q. Did you burn yourself as a result of that?

A. No, I didn't; no.

Q. Did you have your welder's gloves on?

A. I did, yes.

Q. And approximately how long were you down in the hold, Mr. Larson?

A. Not over—not over fifteen minutes.

Q. I see, and during that time, did anyone else come down again, or were you down there during that time alone?

A. I was down there during that time alone, yes.

Q. Now, did the Fire Department arrive before you came out of the hold?

A. No, they arrived after I got out of the hold.

Q. All right, now, what made you come up and out of the hold?

A. Because the smoke was getting too thick.

Q. Getting too thick? A. Yes.

Q. Now, by the time you got out of the hatch, the smoke—was it billowing out fairly thick?

A. Yes; yes, it was. [59]

Q. At any time did you hear the ship's fire alarm sound—the general alarm system?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

A. No, I didn't. I probably wouldn't have been in a position to hear it anyway.

Q. I see. You mean being down in the hold?

A. Yes; yes.

Q. And when you came up topside, what did you do then?

A. I—well, there was nothing I could do—there was nothing I could do.

Q. Well, was your hot lead still down in the hold?

A. The which?

Q. The hot leads in the welder?

A. The lead was in the lower hold and my hood was in there, too.

Q. Did anyone disconnect that lead, do you know?

A. Yes, they did. The lead was disconnected at the machine.

Q. I see. Do you know who did it?

A. I don't know who did it, no.

Q. And what did you do then, if anything? Did you just stand by the hold?

A. I stood by the hold, yes.

Q. When you came out of the hold, was there considerable activity about the deck?

A. Yes, there was, and the Fire Department was just arriving.

Q. Was just arriving? A. Yes. [60]

Q. Now, when you first came out of the hold, did you notice whether any of the ship's fire hoses

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

were strung out, other than the one that had been sent down to you?

A. There was—I would say there was one more.

Q. One more? A. Yes.

Q. Where did that come from?

A. It come from the forward end.

Q. From somewhere forward of the ship?

A. Yes.

Q. Did it come down the port or starboard side?

A. What?

Q. Did it come down the port or starboard side?

A. It come down—I think it come down the starboard side.

Q. The outboard side then. The ship was moored, as I understand it, port side to? A. Yes.

Q. So the other hose came down the starboard side? A. Yes.

Q. Was that hose let out into the—let down into the hold also, do you know?

A. No, I don't think so; no.

Q. And when the Fire Department came, did you remain aboard the ship?

A. I did, yes. [61]

Q. For how long?

A. Oh, for approximately ten minutes—ten or fifteen minutes.

Q. And then what did you do?

A. Went—left for Swan Island.

Q. I see. Did you go in company with any of the other men? A. Went with Riley—Leo Riley.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leonard Larson.)

Q. Leo Riley?

A. Yes. He drove his car and I drove mine.

Q. Now, when you first came aboard the ship, prior to this incident, did you speak with anyone aboard—any of the crew members or anyone in regards to this welding job that you were going to do?

A. No, I didn't; no.

Q. Do you know whether Mr. Smith or Mr. Riley did?

A. Well, I don't know if they did or not.

Q. I see. Do you know whether anyone in the ship's force was aware that this welding was going to be done?

A. I wouldn't know that either; I wouldn't know.

Q. I see. Now, as I understand it, the ladder rung has still not been installed, is that right?

A. Yes, that's right.

Q. To your knowledge, it has not?

A. It has not, no.

Q. Where is the particular rung that you were going to put in, do you know? [62]

A. It was on the forward ladder, about the third rung up. Second or third rung up.

Q. Where the missing rung is? A. Yes.

Q. Would that be even to approximately your chest level—perhaps four feet above the landing pad?

A. Somewheres along approximately about that.

Q. Have you been advised of the position of this particular missing rung before you went to the ship

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

on the job? A. No, I wouldn't; no.

Q. You didn't find out until after you got there?

A. No.

Q. And then Mr. Smith pointed it out to you, did he?

A. He—Mr. Leo Riley was to do the fitting. He told him about it. All my job was to do the welding, was all.

Q. Now, when you went down into number five, did you observe what the cargo was down there?

A. Yes, I did.

Q. What was it?

A. It was paper—rolls of paper, from what I could judge.

Q. Was that all?

A. No, there was some—the cargo next to the—between the ladder and the bulkhead.

Q. What did that appear to be, or did you notice?

A. I thought it was hemp or oakum, but I didn't know—somebody [63] said it was burlap, I didn't know.

Q. You didn't know yourself? A. No.

Q. Was it this particular cargo that seemed to flare up rapidly—where the flames spread rapidly?

A. Yes.

Q. It was? A. Yes.

Mr. Wood: Commander, by "this particular cargo," you refer to the burlap and not the paper,

Respondent's Exhibit No. 23—(Continued)

(Testimony of Leonard Larson.)

is that it? When you say "this particular cargo"—I just wondered which was which?

Lt. Cmdr. Mason: Yes, when I say "this particular cargo," I was referring—you don't have to get this—I was referring to the cargo that he said he thought was oakum or something that someone had told him might be burlap.

Mr. Wood: I would like to ask you to ask him if that was the cargo where the flame started.

Lt. Cmdr. Mason: I did already. And he said "yes." In other words, what it amounts to is it was the burlap but he doesn't know it was burlap.

Q. In your experience as a welder, Mr. Larson, have you ever encountered a situation such as this before, where a fire has occurred while you were in the process of welding?

A. No, not to my knowledge, I haven't; no.

Q. This is your first experience of a casualty of this nature? [64] A. Yes.

Q. Have you ever had any general practice or policy that you, yourself have followed with relation to safety practice in the prevention of fires when you are in cargo holds welding?

A. Yes, I have; yes.

Q. What normally is your practice?

A. Well, we usually use water or anything that we can—that we can—make it as safe as we possibly can.

Q. You mean keeping water on hand for an emergency? A. Yes.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leonard Larson.)

Q. Are there any instructions that you have ever been issued by your company with respect to maintaining any fire prevention equipment on hand?

A. Yes, there has been; yes.

Q. What, specifically have you been instructed to do?

A. Either pull out—put out—pull out a fire line or use a CO₂ bottle, or something like that.

Q. In other words, to keep some fire-fighting apparatus on hand in readiness, is that it?

A. Yes, that's right.

Q. Are these written instructions or are they verbal? A. Verbal instructions.

Q. Verbal instructions. Do you have anything in writing at all? A. No; no. [65]

Q. Now, as a certified welder, are you required by law or by any local harbor rules that you know of, to report this welding to the vessel before commencing the work? A. No, not that I know of.

Q. Not that you know of in either event?

A. No.

Q. Now, in your opinion, do you feel that this fire was actually started by the sparks resulting from the welding that you had started? You feel that this actually did start the fire?

A. Yes, I do.

Q. When you were standing on the landing pad, did you observe whether or not it was clear of all matter and clean and dry? A. Yes, it was.

Q. It was? A. Yes.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Leonard Larson.)

Q. There weren't, as far as you observed, any pieces of cardboard boxes or cardboard sheets of any kind over that? A. No, there wasn't.

Q. No debris? A. No.

Q. And no dunnage—pieces of dunnage over the landing pad itself? A. No.

Q. Was the landing pad dry? I mean there was no oil—— (interrupted). [66]

A. No, oil; no, no.

Q. Was there any odor of oil that you observed?

A. No; not that I observed; no.

Q. And as I understand it, you were not injured as a result of this casualty? A. No; no.

Q. Now, irrespective of the questioning that I have just propounded here, Mr. Larson, do you have anything further that you feel should be added that would be pertinent to this investigation or anything at all that you would care to say?

A. Nothing that I would care to add to it, no.

Lt. Cmdr. Mason: All right, sir. I have no further questions and I want to thank you for appearing here today.

(Witness excused.)

RICHARD BAILEY

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. What is your full name and address, sir?

A. My name is Richard Bailey, 1907 N. E. 32nd Avenue.

Q. And how are you employed, Mr. Bailey?

A. I am a superintendent with Albina Engine and Machine.

Q. How long have you been employed by Albina?

A. Sixteen years. [67]

Q. Now, when you speak of superintendent, what specifically does that position entail? In other words, what are the functions or duties that you must perform?

A. Well, I am in charge of the repair work that we do away from the drydocks.

Q. And that would include such things as repair of vessels upon receipt of a job order at other piers?

A. That's correct.

Q. Now, you are familiar with the fire that occurred aboard the Robert Luckenbach at Luckenbach Terminal last night on 2 April, 1958?

A. Yes.

Q. When did this fire first come to your attention? A. Shortly after 6 o'clock.

Q. Were you aboard the vessel at the time?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

A. No, sir.

Q. Where were you? A. At home.

Q. Now, did you then proceed down to the vessel?

A. Yes, sir.

Q. And approximately what time did you arrive?

A. 6:30, approximately.

Q. Was there any unusual activity going on aboard at this time?

A. The firemen were aboard at this time. At the time I got there. [68]

Q. How did you first become aware of the fire?

A. Les Smith called me.

Q. I see. And what did he tell you when he called?

A. The Robert Luckenbach was afire in number five hold.

Q. Did he explain anything as to probable cause?

A. No.

Q. Well, why would that bring you down to the ship then?

A. We were working in number five hold.

Q. I see. So in other words, you associated the fact that you had men working in number five hold, the fact there was a fire there, so you felt that—
(interrupted). A. Yes, sir.

Q. —it was your duty to appear. And you say when you arrived there, the firemen—the Fire Department was already there? A. Yes.

Q. Did they have water running into the hold at this time, do you recall?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

A. Yes, sir, they did.

Q. Now, coming back to the fact that these men, Mr. Smith, Mr. Riley and Mr. Larson, the previous witnesses, were aboard the ship for the purpose of a welding repair job, can you explain for me exactly how this came to be? In other words, where did the order first originate from—for the repair?

A. Well, Mr. Sterling (phonetic) of the Luckenbach Steamship [69] Company asked us to repair or to replace one broken—or one missing ladder rung in number five lower hold.

Q. Did he contact you personally in regards to this?

A. He contacted Mr. Brewer (phonetic). I was on the *Afoundria* in the morning, and he contacted Mr. Brewer.

Q. Mr. Brewer is who?

A. He is the repair superintendent at Swan Island.

Q. For Albina? A. For Albina, yes.

Q. And Mr. Brewer contacted you, did he?

A. Yes, sir.

Q. About what time would that have been?

A. Prior to noon.

Q. Prior to noon. Were you aboard the *Afoundria* at this time?

A. No, I had made arrangements with Mr. Brewer to look in on the *Luckenbach*, because both ships arrived early on yesterday morning and I couldn't be at both places; which is quite common.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

I met him then on the Luckenbach, at about eleven o'clock, or at that time before noon.

Q. I see. On board the Luckenbach itself?

A. Yes.

Q. And he gave you verbal instructions to replace a missing ladder rung in number five hold?

A. That's correct.

Q. And did you receive any written job order in this connection? [70]

A. No, sir. From Luckenbach Steamship Company you mean?

Q. Well, either from him or from Mr. Sterling or from anyone?

A. Not in connection with this ladder rung, no.

Q. I see. Is it a general practice that you normally receive a job order yourself—that is, in writing, or is it more common that you are given verbal instructions?

A. More common that they are verbal.

Q. Speaking of minor repairs such as this replacing of a ladder rung?

A. That's right, they commonly are verbal.

Q. All right, now, as we picture it, Mr. Sterling has given you verbal instructions—or Mr. Brewer has given you verbal instructions to install this ladder rung in number five—is that correct?

A. That's correct.

Q. And did he describe just where it was located? Or did you go down and look?

A. We—both of us went and looked.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

Q. Mr. Brewer and yourself—— (interrupted).

A. Mr. Sterling—— (interrupted).

Q. And Mr. Sterling? A. Yes, sir.

Q. You actually went down in the hold?

A. No, sir. We went to the after end of the number five hatch and looked over the coaming. They were discharging cargo [71] at that time.

Q. Now, was any comment made to you at this time that the missing rung would be clear of cargo to permit the welding? A. Yes, sir.

Q. Who told you this, Mr. Sterling?

A. I don't remember.

Q. Did they ask you to perform this job at any particular time? A. Yes, sir.

Q. What time? A. Between 6 and 7.

Q. They asked you to perform it—was this Mr. Brewer that said this or Mr. Sterling?

A. No, Mr. Brewer is now out of this.

Q. Oh, I see.

A. I mean I—this is my job now.

Q. So Mr. Sterling is the one that asked that it be done between 6 and 7? A. Yes.

Q. Did he explain why he wanted it done at that particular time?

A. This is the time between the day longshoremen and the night longshoremen, there is an hour free—— (interrupted).

Q. Yes, I understand that, but I mean, did he explain this to you or were you just aware of it?

A. It is customary—I was aware of it. [72]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

Q. You were aware of it through past custom?

A. That's right.

Q. Now, was there anyone else present at the time Mr. Sterling requested that this job be done?

A. I don't believe so; but I don't remember for sure.

Q. Do you recall whether you brought it to the attention of any member of the ship's force that you would accomplish this job? A. Yes, sir.

Q. Who did you notify?

A. We questioned the Chief Mate about this job. There was some question about which ladder the rung was in.

Q. And you asked the Chief Mate to point it out to you or just that he describe it?

A. The job was to be in the after ladder in number five lower hold, and from the hatch coaming, there was no apparent damage to the rung. And then, we—Mr. Sterling and myself and Mr. Brewer and the Chief Mate, to make sure that he intended it to be the after ladder—the cargo was up partially on the after ladder—we couldn't see the entire ladder at that time, and we wanted to make sure that that was the ladder he was talking about.

Q. So all three of you actually went to see—
(interrupted).

A. We—in a group, that's right.

Q. And then did he take you down to show [73] you?

A. No, he confirmed that it was the after ladder that the rung was on, yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

Q. That it was the after ladder. Did you at this time advise him as to what time you would be aboard to make the repair?

A. I didn't personally. I think he was aware that it would be between 6 and 7. I am not sure of that.

Q. You are not positive that he knew that the repairs would be made at that time?

A. No, sir.

Q. Then what did you do after that? Did you contact Mr. Smith or—— (interrupted).

A. Yes, we had no other work on the ship that could be accomplished during the day shift other than the generator job that was going on and left the ship, went back to the Afoundria, and Mr. Smith comes to work at 3 o'clock, the day shift foreman notified him of the job.

Q. At Albina?

A. Yes, sir. I notified the day shift foreman who Mr. Smith works for directly and—— (interrupted).

Q. And then as far as you know, he notified Mr. Smith? A. That's correct.

Q. So you didn't actually have any direct communication with Mr. Smith at all about this particular job?

A. No; until on my way home, I happened to bump into him when he was just going to the [74] ship.

Q. I see. Did you—— (interrupted).

A. I asked him where he was going and he said

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

he was going to the Luckenbach for the ladder rung. This was some time—maybe 5:30.

Q. I see. Now, what I am trying to—or have been trying to ascertain here, Mr. Bailey, is whether or not you specifically brought to the attention of any member of the ship's force, the fact that welding would be accomplished between 6 and 7 in number five hold? A. No, sir.

Q. You didn't specifically notify anyone?

A. No, I didn't specifically notify them.

Q. Now, you stated that you got down to the ship at about 6:30 and the firemen were already there? A. Yes, sir.

Q. And I believe you stated that water was placed on the fire just shortly thereafter?

A. I believe at the time I came aboard, water was going into the hold.

Q. I see. And then what did you do, did you board the vessel? A. Yes, I did.

Q. And did you— (interrupted).

A. I walked up as far as the hatch coaming. I was just in the way.

Q. I see. Was Smith, Riley or Larson there at that time? [75] A. Smith was there.

Q. And how about Riley and Larson, had they already left? A. They had already departed.

Q. And then did you discuss the situation with Smith? A. Yes.

Q. And Mr. Smith related to you the fact that

(Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

a fire had started as the result of a welding spark, did he? A. Yes.

Q. And did you have any further discussion with any of the ship's force?

A. No, sir; I didn't notice any of the ship's force that I recognized as of the ship's force. Mr. Radovich of Luckenbach's Dock—superintendent, I believe, or cargo superintendent, I am acquainted with and I— (unfinished answer).

Q. Now, to your knowledge, was this particular job—referring to the replacement of the missing ladder rung— (interrupted). A. Yes.

Q. —on any kind of a written job order received by Albina—to your knowledge?

A. To my knowledge it wasn't.

Q. It wasn't? A. No.

Q. I see. It was just a—being a small job, it was in addition to possibly other repairs? [76]

A. Yes, sir.

Q. Were there other repairs— (interrupted).

A. Yes, sir.

Q. —that you had to do on the Robert Luckenbach? A. Yes, sir; there were.

Q. There were? A. Yes.

Q. What were those other repairs, just specifically—were they hull or engine?

A. There was one big job in each department—a generator in the engine room and the construction of a bolted false deck in number two 'tween decks for hull.

(Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

Q. I see, and then as I understand it, the first time you even heard about any job with reference to restoring the ladder rung was about at 11 o'clock that morning? A. Yes, sir.

Q. It was brought to your attention. Now, coming to a little bit different matter, Mr. Bailey—are there any instructions issued by yourself or by any higher authority with Albina—welders—relative to any safety precautions that shall be carried out while welding or when welding operations are going to be performed? A. Yes, sir; there are.

Q. Are they in writing or verbal or both?

A. As far as I know, they are verbal and of quite long [77] standing.

Q. And what specifically are these instructions?

A. Well, it is against our rules to either weld or burn on any bulkhead without viewing the other side of the bulkhead—this is very important; and it's—we have rules with regard to welding against tanks; in any hazardous situation, that there is no welder or burner alone any place without somebody there to help protect against fire. These are the things that you have in mind and they—
(interrupted).

Q. Yes. Now, why in particular were there three men sent on this specific job? In other words, as I understand it, only there is a welder and then a fitter or a man who stands by?

A. That's correct.

Q. But in this case, there were three, one being

(Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

of course the foreman. Was that really because Mr. Smith was a foreman and would oversee the task?

A. Well, no; if we had many jobs on the ships—on the ship and lots of men, certainly not the foreman of the entire night shift would have been there to see one ladder rung installed. It is a very minor job, but he was there specifically because we realize there is a fire hazard in working in cargo holds.

Q. You did definitely realize there was a fire hazard. Had you discussed this with Mr. Smith?

A. No. Not at this time. This is— (unfinished answer).

Q. Had you discussed the subject of there being a possible [78] hazard or an existing hazard with Mr. Sterling or Mr. Brewer earlier when you had discussed this task?

A. No, sir; I don't believe so.

Q. You did, however, when you looked down the hatch, observe the cargo that was down there?

A. Well, we were looking at the after ladder. The rung turned out to be on the forward ladder.

Q. At this time when you were looking at the after ladder, did you observe what the cargo was down there?

A. That was conduit and it was all to be discharged prior to the time we were going to— (interrupted).

Q. So in other words then, it was your assumption that the welding was going to be accomplished in the vicinity of conduit?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

A. In the vicinity of no cargo. This cargo was all supposed to be discharged— (interrupted).

Q. Before 6 o'clock?

A. —before 6 o'clock and it was.

Q. Maybe I am misunderstanding you here.

A. At the after ladder—this is the ladder.

Q. Oh, at the after ladder, I see.

A. Yes.

Q. But then of course, it turned out that it was the forward ladder that was involved— (interrupted). A. Yes, sir.

Q. —and you found this out when you, in company with [79] Mr. Sterling and Mr. Brewer saw the Chief Mate regarding this?

A. No, not at that time. He still felt that it was the after ladder. They notified us by telephone about 4 o'clock that it was on the forward ladder.

Q. I see. Was any discussion held then with regard to what the cargo situation was then at the forward ladder? A. No, sir.

Q. Getting back to these instructions of long standing that you spoke of with respect to safety against hazards during welding operations, are there any practices by the—that you have the men observe or any policies established by the company that you are aware of, requiring the presence of water on hand or a fire extinguisher or anything specific along that line?

A. Yes, we never let a welder go into a hazardous place without some means of combatting fire.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

Q. And is that the way the instructions are, that he will never go in without some means of combatting the fire, or is it pretty explicit that he shall have a hose or he shall have an extinguisher?

A. No, sir; it isn't explicit.

Q. I see. Now, with respect to this type of work, are there any rules or regulations which you follow or know should be followed relative to contacting local authorities before performing welding operations aboard these ships?

A. No, not by the contractor, I believe. [80]

Q. In other words, who do you feel would have the responsibility then—or do you know who would have the responsibility for—— (interrupted).

A. I think I know. We used to notify the Captain of the Port that we were intending to weld on ships at loading berths and we were notified that it was the operator of the ship's responsibility and we could notify him for—acting for the operator. The habit became discontinued, I mean. We haven't done it for a year or so.

Q. Do you know why specifically it was discontinued? I mean, was this some instructions you received? A. I don't remember, Mr. Mason.

Q. Do you know whether or not this particular operation was reported to the Captain of the Port?

A. No, I don't know.

Q. You did not report it?

A. No, sir; I did not.

Q. Is there anything further that you feel would

Respondent's Exhibit No. 23—(Continued)
(Testimony of Richard Bailey.)

be pertinent to this investigation that has not been brought out by this questioning or anything further that you, yourself, would care to add, Mr. Bailey?

A. No, sir; I don't really know much about the actual occurrence. I wasn't there and didn't view it until after the fire and I had gotten there. I don't think of anything.

Q. With respect to the other work which you spoke of that was [81] to be performed on the vessel, did any of that entail the fire main or fire-fighting equipment? A. Yes, sir.

Q. It did? A. Yes, sir.

Q. What specifically was that particular portion of the job?

A. We were renewing the section of fire main connecting the—or connecting the deck and the engine department at the main deck level.

Q. Now, during this particular repair, would that have placed the fire hydrants inoperative?

A. No, sir.

Q. It would not? A. No, sir.

Q. The reason I bring this up—I will make this clear to you, Mr. Bailey, is previous testimony by witnesses has indicated that the water to the hydrant just forward of number five hatch was never—no pressure was brought to that hydrant at any time—— (interrupted).

A. That's right—— (interrupted).

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

Q. —and it was understood that that was due to possibly to repairs being made to the fire main.

A. It possibly was, but that didn't render the fire lines inadequate. Upon taking this section of line out, the Chief Engineer made arrangements for us to blank both sides of the line [82] that he could have a solid main in the engine room and a solid main on deck and hook water up from the dock—or was to hook water up from the dock to this fire main so that he would have dock water on the fire main and ship water on the engine room.

Q. Now, do you happen to know whether or not this condition did exist?

A. I know it was blanked off.

Q. You know that the line was blanked off where the section of fire main had been removed?

A. Yes, sir.

Q. You don't know though, whether any dock connection had been made?

A. No, sir; I don't know. I know it was connected this morning. That is when it occurred to me to look.

Q. Well, now, this will prove more an—a more appropriate question to a later witness, but possibly from your past experience, you might be able to answer it somewhat. Do you know what the shore facilities are at the Luckenbach Terminals relative to water. In other words, do they have adequate water facilities to furnish a ship sufficient pressure

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

for their fire mains in the event of the work of the nature that you were performing on there?

A. I feel that they have. They have two and a half inch hydrants on the face of the dock.

Q. They do have? [83]

A. I assume that they have two and a half inch mains to them.

Q. They do have the hydrants, though, that you are familiar with? A. Yes, sir.

Q. I see. How about the fire pump itself, was that being worked on, too?

A. No, not to my knowledge.

Q. I see. The only section— (interrupted).

A. Not by us.

Q. And the only section you know of that was being repaired by Albina in either event, was that one section of fire main that had been removed?

A. Yes, sir.

Q. And then by blanking this off and using power from—or water from shore facilities, it was still possible to bring water to the fire hydrant— (interrupted).

A. That was the plan. I mean, the pipe-fitter and the Chief Engineer discussed this.

Q. Is that a single main system, do you know?

A. On the ship?

Q: Yes.

A. As far as I know, it is.

Q. Now, is there anything further you feel would be pertinent? A. I think of nothing.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard Bailey.)

Q. Or is there anything you would care to say at this time? [84] A. No, I believe not.

Q. Do you know whether there were any other contractors effecting repairs on the vessel?

A. The only other one would be Worthington, that I would know of. I mean, they may have made other arrangements with others, but we had a man from—— (interrupted).

Q. Do you know whether Worthington was?

A. Yes, we had him—— (interrupted).

Q. What was he doing?

A. He was working on the generator with our men.

Q. He was working on the generator?

A. Yes, he was working for Albina though.

Q. I see, so that again, you would be familiar with the work that he was doing? A. Yes.

Q. With respect to the fire system, that is a steam fire pump? And again, if you don't know, say you don't know, because we will have the engineer of the vessel later.

A. That would be better. I don't know.

Lt. Cmdr. Mason: I have no further questions. Thank you very much, Mr. Bailey. We appreciate your presence here today.

(Witness excused.) [85]

Respondent's Exhibit No. 23—(Continued)

ENSIGN HOWARD CHARLES BEELER, JR.,
U.S.C.G.

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. State your full name, rank, serial number, and present duty station.

A. Howard Charles Beeler, Jr., service number is 5907, and I'm an Ensign in the United States Coast Guard, currently stationed at the Port Security Unit, Portland, located on Swan Island.

Q. How long have you been on your present duty station, Mr. Beeler?

A. Approximately a year and a half.

Q. And what is your particular—primary duty at that station?

A. My primary duty is First Lieutenant.

Q. And do you have any duty in connection with the port security function of the station?

A. I'm also—as a collateral duty—Waterfront Security Officer.

Q. I see, and as Waterfront Security Officer, what does this particular position entail?

A. It entails all phases of the security of the waterfront, in that we run routine inspections of pier facilities, checking [85-1] their equipment against the regulations set down in Title 46 USC.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

Q. Now, do you have any particular intervals—set intervals—between which you make these various inspections of the terminal facilities?

A. Yes, we do. There are ten facilities that we inspect that actually handle cargo, and we inspect them once a week. In some instances that is not true. When we have other duties at the unit calling us away from it, it does not occur every week, but for the most part, we inspect them at least once a week.

Q. Now, are you familiar with the Luckenbach Terminal? A. I am.

Q. And this, to your knowledge, designated as a waterfront facility?

A. Yes; under the terms in the regulations, it would be a waterfront facility, in that all facilities that meet up with the regulations, have a general designation. In other words, there's a paragraph written in the regulations which designates all facilities as designated waterfront facilities, unless they do not comply with the regulations, and then it may be revoked.

Q. I see, and Luckenbach Terminal falls into this category? A. It is.

Q. Do you know on what date the last inspection or survey was made of that facility? [85-2]

A. The twenty-seventh of March, 1958.

Q. And, at that time, do you know whether or not there was any dangerous cargo found at or about the facility?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

A. On that particular date, no, there was not.

Q. There was not?

A. At least there was none reported by my inspectors.

Q. I see. Now, if a vessel moors to the particular facility, does that vessel then become a part of the facility insofar as its cargo aboard is concerned?

A. No, not under the definition of a waterfront facility, which I could read if you wanted me to.

Q. If you would, please.

A. The definition—— (interrupted).

Q. If you would just identify from what you are reading.

A. I'm reading from a publication titled "Security of Vessels and Waterfront Facilities." Its short title is CG-239, which we refer to it as.

Q. And this is an excerpt from the Code of Federal Regulations, Title 33, Parts 6, 121, 122, 125, and 126, is that correct? A. That's right.

Q. All right, if you will read that portion which you referred to before.

A. I am referring to Part 6.01-4. "Waterfront facility. Waterfront facility as used in this part, means all piers, [85-3] wharves, docks, and similar structures to which vessels may be secured, buildings on such structures or contiguous to them, and equipment and materials on such structures or in such buildings."

Q. Now, referring to the subject of dangerous cargo. Are there any existing regulations which

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)
pertain to or require certain actions to be carried out when welding is to be performed on board any vessel or at any waterfront facility when dangerous cargo is aboard such vessel or waterfront facility?

A. Yes. In regards to burning and welding aboard waterfront facilities, the particular part is Title 33, 126.15, paragraph (c).

Q. And if you would identify what it is that you are now reading from.

A. I am referring to the Federal Register Reprint dated 20 December, 1957, which is an amendment to the previous referred to publication. I will read, if you want me to, the particular part in question.

Q. Yes.

A. "Welding or hot work." This is—also I might add—is the specific part which is conditions for designation as designated waterfront facility. There are several paragraphs, this being one. "Paragraph (c). Welding or hot work. That oxyacetylene or similar welding or burning, or other hot [85-4] work including electric welding or the operation of equipment therefor is prohibited on the waterfront facility during the handling, storing, stowing, loading, discharging, or transporting of dangerous cargo thereon, except when approved by the Captain of the Port: Provided, that such work shall not be conducted at any time during the handling, storing, stowing, loading, discharging, or transporting of explosives."

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

Q. Now, is there anything to determine when an item is or is not deemed dangerous cargo?

A. There is. There is a publication which is Title 46, Parts 146 to 149—146 specifically—which are listed therein dangerous cargoes and articles. There is an excerpt which is a publication which is called "Explosives or Other Dangerous Articles Aboard Vessels."

Q. Now, referring specifically to the articles as published in this publication, how is burlap classified?

A. There are different terms, or I should say different types of burlap. There is burlap cloth, burlap bags, new burlap bags—used or washed, and so forth. I have about four or five of them, they all being dangerous cargo, and their specific classification per this publication is "hazardous article." They have them listed in several categories—hazardous articles, inflammable liquids, et cetera. This one is "hazardous articles."

Q. Now would this imply, then, that were such articles to be [85-5] in the hold of a vessel, then, before any welding could be performed on that vessel, application and approval would first have to be made to the nearest Captain of the Port?

A. That is correct, in that the particular regulation that I quoted here, would be—would not necessarily, under strict interpretations, cover the burning and welding aboard ship, but in this particular publication there is set down a regulation

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

which would be 146.02-20, which would cover the burning or welding aboard ship, and in essence, it says the same as what I said—that burning or welding shall not be performed when there is hazardous articles present, without specific—now, with regards to this specific section, there should be no hazardous articles or dangerous cargo in the hold when there is burning or welding going on, without the explicit permission of the Captain of the Port.

Q. I see. Now, referring to these specific bales, previously described, of construction paper, and also the rolls of paper, how are these designated, if you can readily find it? If you can't, we can look it up.

A. How they are designated, you say?

Q. Yes.

A. They are designated as hazardous articles, and I was going to—— (interrupted).

Q. Well, are they designated as hazardous articles to the effect that they would effect this previous regulation you [85-6] cited? In other words, that again, the presence of those articles, would require notifying the Captain of the Port before welding is performed?

A. That is correct.

Q. That is all I wanted to find out.

A. That is correct.

Q. Now, to your knowledge, was the welding that was to be performed on 2 April, on board the Robert Luckenbach, reported to the Captain of the Port?

A. It was not.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

Q. It was not. How do you know it was not?

A. Now, you ask the question in that "to my knowledge;" it has been the practice in the past that whenever a report of burning or welding is received, it is immediately transmitted to me, and in turn, I would send a representative of the Coast Guard out, either on a routine inspection—and observe the particular burning or welding while it is in process, or prior to the burning or welding.

Q. I see. Now, is it a practice, also, that when the Captain of the Port is notified that there is welding to be performed under such conditions as we have previously described here, that you would also furnish a fire watch?

A. That we, the Coast Guard, would—— (interrupted).

Q. The Coast Guard would furnish a fire watch?

A. No, sir. [85-7]

Q. Would you require that the vessel furnish a fire watch?

A. We would, yes. I might add something here; that it has been brought to my attention recently, that we have not been getting sufficient reports of burning or welding, and during one inspection of a pier, we happened to observe a crew of men burning and welding, and we requested if they had a permit, which they did not, and we knew it was a violation in that specific instance, and I do not remember the name of the company, but I know it was not Albina Engine and Machinery.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

Q. Now, as I understand it, on a recent date, you had occasion, also, to send out a copy of the—Federal Register, was it not, pertaining to this subject, to all of the waterfront—designated waterfront facilities in the Portland area?

A. Yes, Commander, that's true.

Q. Is this the particular Federal Register Reprint that you sent (handed document to witness)?

A. That is the one.

Q. Numbered 246, dated 20 December, 1957. And was a copy of this also sent to the Luckenbach Terminal?

A. It was.

Q. Do you happen to recall the date on which it was mailed, or approximately when?

A. Approximately a month ago. This reprint came in around the first of the year, or shortly thereafter, and Captain Thayer asked me to read it over carefully, and if there was any [85-8] drastic changes in the regulations, or anything that might be of particular interest to the pier owners, that I should write up a letter to that effect and submit it to those people. There was practically the entire publication—or reprint—that was applicable to these people, so I wrote and got sufficient copies to distribute, and I distributed to the ten facilities which we regularly inspect.

Q. Do you have anything further that you feel should be added or pertinent to this investigation at this time?

A. Not at this time, sir.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

Q. Do you know whether or not, or did you have occasion to send copies of the Federal Register Reprint to any of the known contractors that accomplish repairs aboard these ships in the Portland area?

A. I could not make a flat statement, "yes" or "no," but I do not believe so. I gave them to my head inspector to mail, and I observed him mailing them to the specific piers, but whether he sent them to the various contractors, I could not say.

Q. With respect to the particular instructions requiring that the Captain of the Port be notified as to welding at waterfront facilities and/or aboard merchant vessels where dangerous or hazardous cargo is involved, who actually is responsible for this reporting, if you know?

A. The way it's specified in the regulations, I do not think [85-9] it—it's either the owner or operator or responsible parties, I believe. In other words, there is a general—it doesn't specify in that particular article who will do the reporting, but it does specify in a closing paragraph at the end of that particular section of this manual, that the responsibility is not taken away from the owner or operator or—then they list on. I can cite that particular paragraph if you want it.

Q. If you would cite that, it might help to clarify. In either event, we won't make this thing lengthy by trying to go deeper than just citing

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)

that, because we can find out and there's no need to have it on the record.

A. This would be sub-part 6.19—"Responsibility for Security of Vessels and Waterfront Facilities." "6.19-1. Primary responsibility. Nothing contained in this part shall be construed as relieving the masters, owners, operators, and agents of vessels or other waterfront facilities from their primary responsibility for the protection and security of such vessels or waterfront facilities." Signed Harry S. Truman, The White House.

Q. Referring back to your earlier testimony, am I to understand that the practice of requesting or notifying Captain of the Port and requesting his permission prior to welding of vessels and facilities having hazardous cargo, has not been done?

A. No, it has been done. Now I kind of mumbled through that [85-10] particular statement. The Captain of the Port is not responsible, naturally, for this reporting, and I believe my statement was that reports had been too infrequent. In other words, it was my explicit opinion that there was more burning and welding going on than had been reported, and that therefore— (interrupted).

Q. You feel there was a laxity in the reports being made?

A. There definitely was, and that was why I made the statement that I, in recent months, have been initiating a program—or I'm in the process of informing these specific contractors—of which I

Respondent's Exhibit No. 23—(Continued)

(Testimony of Ensign Howard Charles Beeler, Jr.)
mentioned the violation on Terminal four, and I had an understanding with that particular company.

Q. And that is, specifically, why you initiated mailing copies of this Federal Register Reprint to the facilities, also? A. Correct.

Q. On some of these reports that have been received, can you recall who, specifically, made them—whether it was the contractor, the Master, ship owner, or the waterfront facility?

A. No, I don't recall. They phone in their report, and we take it as such and try to get out as soon as we can, but we—who gives us the report, I haven't made specific note of, no.

Q. I see. Do you have anything further that you wish to add at this time?

A. No, I do [85-11] not.

Lt. Cmdr. Mason: I have no further questions; thank you very much, sir.

(Witness excused.)

Lt. Cmdr. Mason: Gentlemen, that's it for today. We will commence at 10 o'clock tomorrow morning.

(Whereupon, at 3:45 o'clock p.m., the preliminary investigation adjourned.) [85-12]

Respondent's Exhibit No. 23—(Continued)

Second Day

(The preliminary investigation reconvened at 10:10 o'clock a.m., Friday, April 4, 1958, with the same parties heretofore mentioned being present.)

JAMES WISHART MAITLAND

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Lt. Cmdr. Mason: Before proceeding with this witness, I should like to have you make an appearance?

Mr. Gray: Wendell Gray, Attorney, Equitable Building, for Albina Engine and Machine Works, in addition to Mr. Krause.

Examined

By Lt. Cmdr. Mason:

Q. State your full name and address, sir?

A. James Wishart Maitland, 1021 Prospect Ridge Boulevard, Haddon Heights, New Jersey.

Q. And what's your occupation, sir?

A. Master of the Robert Luckenbach.

Q. And you are a licensed officer in the United States Merchant Marine? A. Yes, sir.

Q. Having before me a crew list of the SS Robert Luckenbach for the last voyage, Captain, I notice on here that your license for Master is indicated

Respondent's Exhibit No. 23—(Continued)
(Testimony of James Wishart Maitland.)

to be number 198 821—would that be correct, [86]
sir? A. I presume that as being correct.

Q. And how long have you been serving as a
Master in the Merchant Marine, Captain?

A. Since 1942.

Q. And you have been going to sea in all how
long? A. Twenty-nine years.

Q. And how long have you been employed by
the Luchenbach firm?

A. Twenty-one years.

Q. And how long as Master on board the Robert
Luckenbach? A. Little over three years.

Q. Has that been continuous with the exception
of vacation times? A. Yes, sir.

Q. Captain, as I understand it, the Robert Luck-
enbach is a cargo vessel, official number 245,923,
single screw, propelled by steam, of U. S. national-
ity, owned by Luckenbach Steamship Company, 120
Wall Street, New York, New York; built of steel
in 1944, with a gross tonnage of 7,882, would that be
correct, sir? A. Yes, sir.

Q. And your last voyage, I understand, Captain,
terminated at Portland on 2 April, 1958, is that
correct? A. Yes, sir.

Q. Where did that voyage originally start, Cap-
tain? [87] A. I don't quite understand.

Q. Where was your port prior to Portland?

A. Longview, Washington.

Q. And prior to that, sir?

A. Los Angeles, California.

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

Q. And when did you make your arrival at Longview? A. In the afternoon of April first.

Q. And did you have cargo aboard upon your arrival at Longview? A. Yes, sir.

Q. What did that cargo consist of, basically?

A. General cargo.

Q. And did you off load, or—— (interrupted).

A. No, we took on cargo.

Q. You took on cargo. What was that particular cargo, also general? A. Rolls of paper.

Q. And then you departed Longview and proceeded to Portland. What was the purpose of coming in to Portland, sir?

A. To discharge and load cargo.

Q. And you arrived on the morning of 2 April, is that right? A. Yes, sir.

Q. And did off-loading and on-loading operations commence immediately?

A. Shortly thereafter docking. [88]

Q. And what, specifically, was the cargo that was off-loaded?

A. General cargo, to my knowledge.

Q. And you say you also took on cargo at this time? A. At that time, I do not know.

Q. I see. Now, do you have the information available to you now as to what this general cargo actually consisted of? A. No, sir, I do not.

Q. You are aware, are you not, that part of the cargo consisted of bales of used burlap sacks, rolls of paper, and bales of square construction paper?

Respondent's Exhibit No. 23—(Continued)
(Testimony of James Wishart Maitland.)

A. Yes, sir.

Q. And further included a certain quantity of conduit?
A. So I believe.

Q. Now, upon your arrival at Portland, Captain, were there any arrangements made or had there been any arrangements made for any repairs to the vessel?

A. Within my knowledge, no. The only thing I'd known to be in hand was finishing of the third special survey on one generator, and then to complete third special survey.

Q. I see. Was there anything to be done, to your knowledge, with respect to the fire main system?

A. No, sir.

Q. Was there any structural repairs that you know of, to be made, such as welding of beam supports and so on?

A. None to my knowledge. [89]

Q. Now, Captain, I'd like to have you describe for me the fire fighting equipment that you have on board the Luckenbach, with respect to the type of equipment and where each is located.

A. You mean including the hand extinguishers and so forth?

Q. Well, I'm not too concerned with specific number and location of the hand extinguishers, but let us first start with the cargo holds. What type of extinguishing agent, if any, did you have for the cargo holds?

A. We have a built in CO₂ system.

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

Q. Are you also equipped with steam smothering? A. No, sir.

Q. And do you have a smoke indicator in the pilothouse? A. We do.

Q. And you have a general alarm system, do you not? A. Yes, sir, we do.

Q. Now, the extent of this general alarm system is what? In other words, how many controls do you have for activating this system? A. One only.

Q. Just one. Where is that located?

A. It is located in the wheelhouse.

Q. And then do you have bells situated at various intervals throughout the length of the ship?

A. As per Coast Guard regulations. [90]

Q. I see. And with respect to fire hydrants, you have the proper number in accordance with the—
(interrupted).

A. —existing— (interrupted).

Q. —inspections and regulations.

A. Yes, sir.

Q. Do you also have an emergency station bill posted? A. We have them.

Q. Does this include assigned stations for fire stations? A. It does.

Q. Do you normally establish an in-port fire watch? A. No.

Q. Do you know whether any had been established in this particular instance on the second of April? A. None to my knowledge.

Q. Now, as I understand it, some time on the

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

afternoon of 2 April, you went ashore, is that correct, sir? A. Yes, sir.

Q. Approximately what time was that?

A. Approximately 2:00 p.m.; 2:30 p.m.; in that vicinity.

Q. And when did you next return to the ship?

A. At 10:00 p.m., of the same night.

Q. Now, prior to departing the vessel, were you aware of any repairs at that time that were to be accomplished on board the vessel?

A. None, other than I mentioned. [91]

Q. And then you say you came back to the ship at approximately 10:00 p.m.? A. Yes, sir.

Q. And, upon arrival, what did you find?

A. I found that there was fire fighting equipment from the City of Portland on the ship and there was a fire—at that time was under control according to the fire department—in number five hold of the vessel.

Q. And did you go right on board?

A. Yes, sir.

Q. And was any of the ship's force up and about? A. Yes, sir.

Q. What did you do first when you boarded, did you contact the watch officer? A. Yes, sir.

Q. Who was that?

A. Mister Protik (phonetic), the Junior Third Mate.

Q. And did you receive a report from him?

A. Yes, sir.

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

Q. And what, basically, were the contents of this report?

A. He told me there had been a fire in number five, apparently started from welding; he told me what he had done upon discovering the fire.

Q. And did you go down and examine the scene yourself?

A. I didn't go down in the hold—it wasn't—I could see [92] what trouble was going on; I did not go down in the hold.

Q. I see.

A. At that time it was rather dangerous.

Q. Do you know whether or not there had been any "No Smoking" signs posted about the ship prior to your departure at around two o'clock?

A. We have them posted on the ship and smoking areas for longshoremen and visiting personnel.

Q. I see. Do you know, prior to departure, whether or not your fire fighting equipment was in good order, such as the fire pump, hydrants and so on?

A. To the best of my knowledge, it was in—
(interrupted).

Q. To your knowledge, they were in good order?

A. Yes.

Q. Now, Captain, who would be responsible for the stowage of cargo on board your vessel?

A. The Master and Chief Mate are responsible to a degree and we have a shore staff of super-cargoes that also stow the ship.

Respondent's Exhibit No. 23—(Continued)
(Testimony of James Wishart Maitland.)

Q. And you have a record of the cargo that you had on board? A. Yes, sir.

Q. And as I understand, you don't have that record with you now? A. No, sir, I don't.

Q. Now, did you receive any report from the Mate or anyone [93] else thereafter, relative to the extent of cargo damage resulting from this fire?

A. I have not received any information as to the extent of damage to cargo.

Q. Have you received any information relative to the extent of damage to the vessel?

A. Not yet, sir.

Q. As I understand it, your vessel is presently scheduled for drydocking some time on this date, is it not? A. Yes, sir.

Q. Are they presently off-loading the cargo?

A. Yes, sir.

Q. Now, were you at any time aware of any job order relative to the repairing of the ladder rung which was missing on the ladder in number five hold? A. No, sir.

Q. Did you, prior to the departure from the ship at about two o'clock on 2 April, have any information relative to a job order having been originated for such a repair? A. No, sir.

Q. Now, was it reported to you how the fire started?

A. They reported to me it was assumed it was started from the welding.

Q. And had the Junior Third Mate, in reporting

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

to you the circumstances that had occurred, also advised you as to what [94] action he had taken?

A. Yes, sir.

Q. And what, specifically, did he report as having been done aboard the ship by the ship's force?

A. Ringing of the general alarm; calling for water on deck; taking a hand extinguisher to the scene of the fire, and having knowledge of the shore side fire department being called.

Q. Now, as a general rule, when you moor at a terminal, such as in this instance, the watch officers go on an eight hour schedule, is that correct?

A. Yes, sir.

Q. Is there also an engineering watch maintained, insofar as the engineering officers are concerned, do you know? A. Yes, sir.

Q. There is. And would I be correct in assuming that the watches are normally established for twelve to eight, eight to twelve, in that manner?

A. You're talking of— (interrupted).

Q. Twelve noon to eight p.m., eight p.m., to midnight, and midnight to eight a.m.? A. No, sir.

Q. They are not? A. No, sir.

Q. What is the schedule of your in-port watches?

A. In port, the Chief Officer and the Second Officer stand [95] the day watch.

Q. And when you speak of "day watch," does that mean that they are both up and about the vessel, or— (interrupted).

Respondent's Exhibit No. 23—(Continued)
(Testimony of James Wishart Maitland.)

A. From eight to five.

Q. From eight to five; I see. That's the Chief Officer and the Second.

A. At four p.m., the Junior Third Officer comes on watch from four to midnight.

Q. That's the Junior Third.

A. Yes, sir. From midnight to eight, is the Third Mate.

Q. Do the engineers establish a similar watch schedule, do you know? A. Yes.

Q. Now, what, specifically, are the duties of the Mate on watch during the evening hours?

A. He stands an alert watch, sees that the vessel is well lighted, and checks cargo and, if necessary, sees that the cargo gear is in good working order and, in other words, maintains the ship—an alert watch.

Q. I see. In other words, it's a security watch. Would that be correct?

A. Security is part of it.

Q. When I speak of security, I am referring primarily to the safety of the vessel.

A. Safety of the vessel is— (interrupted). [96]

Q. And whose responsibility is it to hook up to shore power and water facilities when such is necessary, when you are moored to a terminal?

A. On a live ship we don't do that; the ship has its own facilities.

Q. I see, and assuming that the facilities were

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

made inoperative for one reason or another, whose responsibility, then, would that be?

A. If we're having work due to boilers or anything else, the contractor—for all my experience—takes care of that; hooking up the shore lines.

Q. I see, but you mean by that, that it's no one's responsibility aboard the ship to see that that is done? For example, if there's to be work accomplished on the fire system, that you nor anyone aboard ship would be responsible to see that shore water facilities are hooked up—— (interrupted).

A. That would be my responsibility to see that that was taken care of.

Q. I see. Did the Junior Third Mate, when he rendered his report to you concerning the fire that occurred when you were off the vessel, did he indicate or report anything with respect to the fact that water was not obtainable at the hydrant?

A. He did.

Q. Did he explain why this was not possible? [97]

A. He didn't go into any explanations to me about it.

Q. Have you since ascertained as to why there wasn't water brought to that hydrant?

A. Yes, sir.

Q. What was the reason for that, sir?

A. They found that part of the fire line had been removed and blanked off.

Q. To your knowledge, is the ship equipped with a single main system? A. Single main system.

Respondent's Exhibit No. 23—(Continued)
(Testimony of James Wishart Maitland.)

Q. And it had been blanked off, and had any connections been made to the shore facilities?

A. When I came aboard, they were connected up—when I saw them.

Q. They were connected up when you came aboard. Were they connected up when you went ashore? A. To my knowledge, I don't know.

Q. Now, this question I will more rightfully be able to address the Chief Engineer, Captain, but do you happen to know, of your own knowledge or from what has been reported to you, whether the removal of this fire main section had caused the lack of water to the hydrants throughout the entire length of the ship, or would this just segregate a certain part?

A. It would segregate the engineroom from the rest of the [98] ship. In other words, the engineroom would have water; the rest of the ship would not, for there was no shore line hooked up.

Q. I see. Have you received any information or instructions, Captain, relative to when your vessel will be departing Portland area?

A. No, sir, not as yet.

Q. It is my understanding that it will be at least until Tuesday before the vessel would be prepared to get underway. Is that your understanding?

A. I have no knowledge of it.

Q. You are remaining with the vessel, are you?

A. To my knowledge, yes.

Q. Now, you've been present during the testi-

Respondent's Exhibit No. 23—(Continued)

(Testimony of James Wishart Maitland.)

mony of the earlier witnesses and, as I understand it, you will undoubtedly be present through the remainder of this investigation, or at least you will be represented by counsel during that time. Because of this, Captain, I am going to tell you at this time that it may be necessary to call you—recall you—at a later date or time for further questioning, but for the present, I have no further questions, unless you have something yourself that you'd care to add or feel might be pertinent to the investigation at this time. A. No, sir, I have not.

Lt. Cmdr. Mason: Very well, Captain. At this time you are [99] excused as a witness.

(Witness excused.)

STANLEY M. RADOVICH

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. What is your name and address, sir?

A. My name is Stanley M. Radovich; my address is 7650 S. W. 84th Avenue.

Q. And is that R-a-d-a-v-i-c-h?

A. It's R-a-d-o-v-i-c-h.

Q. And what is your occupation, Mr. Radovich?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

A. I am a Marine Superintendent with Luckenbach Steamship Company.

Q. How long have you been employed by Luckenbach? A. Since September of 1953.

Q. And were you engaged in similar employment prior to that time?

A. I was with State Steamship Company prior to that time.

Q. And what, specifically, do the duties entail, with respect to Marine Superintendent?

A. It entails the hiring, the supervising of personnel, dealing with the loading and discharging of cargo, and in part, as liaison between the ship and our offices in various [100] ports, and in Portland specifically.

Q. Do you have any association with repairs to be effected by contractors or otherwise?

A. No, I don't.

Q. Now, as I understand it, you were on board the Robert Luckenbach on the evening of 2 April, at the time that a fire occurred?

A. That's right.

Q. Now, when did you first board the vessel?

A. This will be an estimation, because I— (interrupted).

Q. Perfectly all right, sir.

A. I would say it was approximately ten minutes after six—either five or ten minutes after six p.m.

Q. On the second of April?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

A. On the second of April.

Q. And was this the first time you had boarded her since her arrival that morning?

A. No, it hadn't been; I had been on and off the ship an untold number of times during the course of the day.

Q. I see, and what was the specific purpose—reasons for your being aboard numerous times?

A. I had to observe the loading and discharging of cargo; that is my specific function.

Q. I see, and you stated earlier that you were aboard when this fire broke out. When had you boarded at that time? [101]

A. At between five and ten minutes after six p.m.

Q. I see, and was off-loading going on at that time?

A. No, it wasn't; it was between shifts.

Q. The longshoremen had secured the day shift?

A. They had secured at 1800—six p.m.

Q. I see, and as I understand it, now, you witnessed part or possibly all the events surrounding the fire casualty; is that correct, sir?

A. That's right.

Q. Now, if you'd just relate in your own words, exactly what happened—what you saw.

A. Well, I went aboard about five or ten minutes after six p.m. I went up to number two hatch, climbed down to lower 'tween deck to the top of the deep tanks. I was trying to determine how much

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

discharge cargo there was left in the deep tanks. That was a very critical problem with us. I climbed back out, went back aft to number five—— (interrupted).

Q. Excuse me just a moment. What was the critical problem with you, relative to the deep tanks? I don't quite understand that.

A. We had—I was directed to attempt to have the deep tanks discharged of cargo and cleaned relative to some ship repair work to be done in the lower 'tween deck of number two hatch. We had made arrangements that we would attempt to have it ready by eight a.m. in the morning, and I had to determine [102] whether or not it would be required to relieve that longshore gang between twelve and one a.m., to facilitate getting the cargo discharged and the hatch cleaned up as he wished it to be.

Q. Do you happen to know what those repairs entail?

A. It entailed installing a false deck—Uni-strut false deck in the lower 'tween deck.

Q. I see. This was to require welding operations, then, was it? A. I couldn't say.

Q. All right, if you will proceed from there.

A. Well, I went back to number five hatch, and the forward end of the hatch was covered, and—— (interrupted).

Q. This was about what time now?

A. About ten minutes after six, and I stuck my head over the coaming to determine if the welders—

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

if any welders or any ship repairmen were down in the lower hold—and I no more than peered over the coaming, when I saw this flash and somebody hollered for water—said “Get some water,” and then I immediately left and went up to notify the Mate that there was a possibility of fire in number five hatch, and then I went out on the dock immediately and called the fire department.

Q. Were you aware that there was to be some welding performed in that hold? [103]

A. Yes, I was.

Q. When did you first become aware of that?

A. Oh, about twelve noon that day, or it may have been shortly after lunch; somewhere in there.

Q. How did that come about?

A. I was advised by the Port Engineer.

Q. Who was who? What was his name?

A. Mr. Sterling.

Q. What, specifically, did he advise you of?

A. He had indicated that there was a faulty rung in number five, lower hold, and that it was somewhere within four or five feet of the lower hold deck.

Q. And was anyone else present at the time this was reported to you?

A. I can't recall; I really can't recall—we talked on and off all day—I mean different times, and I can't recall if anyone was there at the time or not. Now that you ask me, I do recall. The Chief Mate was present at the time.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

Q. I see. Then you, of your own knowledge then, did know that evening, that there was to be some welding performed? A. That's right.

Q. And had you made any arrangements relative to the time that the welding would be done?

A. Yes, I had.

Q. And that, as I understand it, was to be between six and [104] seven, when the longshoremen were changing shifts? A. That's correct.

Q. And when you looked over the hatch to ascertain if there were any welders down there, you did see the men down there?

A. I did definitely see the men down there.

Q. Did you observe the welding wire leading down there? A. Definitely.

Q. Prior to boarding the ship, had you observed the welding equipment on the pier?

A. Yes, I had.

Q. And when you came aboard at approximately five or ten minutes after six, did you stop to discuss this welding operation with anyone aboard the ship?

A. No, I hadn't. No one was in the present proximity at the time; nobody was in sight connected with it, so it just didn't occur to me.

Q. Well, when you went back to look down in the hold, were any of the ship's force present at that time?

A. By "ship's force," do you mean personnel of the crew?

Q. Ship's crew? A. No, they were not.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

Q. They were not. And the longshoremen, of course, had left? A. That's right.

Q. Now, did you at any time, after you had boarded it at about five or ten after six, see, or have conversation with [105] the watch officer, the Junior Third Mate, who I understand was on watch? A. You mean prior to that time?

Q. Well, at any time from the time you boarded at five or ten after six. A. Up to the incident?

Q. Up to the incident. A. No, I had not.

Q. When did you first see him, if at all?

A. I saw him immediately—as I said before—when they hollered “Get the water—Fire,” well, I immediately went up to the Mate's quarters. I had not noticed him on deck prior to—in my earlier walking around the deck, so I assumed he was up there somewhere around the Mate's quarters and that is when I first saw him.

Q. And what did you say then?

A. I told him “It looks like a fire in number five hold.”

Q. And did he say anything or do anything?

A. Well, he immediately went out on deck. I'm not too sure of where he went—I'm not too certain—I believe he went on deck aft; he was heading aft, and I, as I said before, I turned around immediately and full speed went to the dock to my office and called the fire department.

Q. Which you did? A. Which I did. [106]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

Q. And approximately how much time elapsed before the fire department arrived?

A. I would estimate to be about four or five minutes.

Q. Now, at any time, did you hear the ship's general alarm go off?

A. I can't recall; I really can't recall. I can't say yes or no—I tend to say no.

Q. However, it's possible it could have sounded while you were off phoning?

A. It could have very well. Being in the office, I would not hear it.

Q. Now, after you phoned the fire department, then you came back aboard, did you, or did you remain on the dock?

A. I remained on the dock to notify my other people, my superiors, and I told my foremen who were in the office that there was a fire and to go up and give all the help that they could.

Q. Who were your foremen?

A. Mr. Suslitch (phonetic) and Mr. Taylor.

Q. And both employed by Luckenbach?

A. Luckenbach.

Q. And you stated that you stayed there to also make a report to your superiors. Did you do that also?

A. Yes, I did.

Q. And who were those particular people? [107]

A. Mr. Piper and Mr. Burdick (phonetic).

Q. I see. Now, did you later come back aboard the ship?

A. Yes; I did.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

Q. And you have since made a cursory examination of the results of this fire, have you not?

A. Yes.

Q. And what were your findings?

A. Well, there was cargo damage to general cargo in number 5 lower hold forward, two sections of the mid hatch, there is water damage to rolls of wrapping paper. There appeared to be water damage to rolls of wrapping paper in number 4 lower hold. There appeared to be some fire damage and water damage in the lower 'tween deck of number 4 hatch. The center line bulkhead, number 5 lower hold forward; thwartship bulkhead number 5 lower hold forward was scarred and burned, partially buckled. There is some steel plate damage alongside the portside on the skin of number 5—abreast number 5 hatch. That is about the extent of it.

Q. Now, when you first looked down the hold shortly after 6:00 p.m. and observed the men—the welders down there—did you notice whether or not there was any area cleared insofar as the cargo is concerned?

A. The square of the hatch itself was clear of cargo. The cargo in the forward end of the lower hold extended to approximately three to four feet of the ladder—forward of the ladder, [108] in a straight line across.

Q. Well, now, to clarify this, had you stepped down the ladder into number 5, would you have been able to go down and stand on the landing

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

ramp at the foot of the ladder or would you have been standing on cargo?

A. You would have been standing right on the deck of the lower hold.

Q. Now, do you recall yesterday that you were in the hold at the same time that I was taking photographs?

A. Yes, sir.

Q. And is it not true at that time, when we were down there that that landing ramp had bales of burlap sacks covering the entire deck area?

A. At that time it did, yes, sir.

Q. Has there been any—or had there been any shift of the cargo in that hold that to your—to your knowledge, after the fire?

A. Yes; there has been.

Q. There had been?

A. Yes.

Q. What was the purpose of that if you know?

A. The Fire Battalion Chief requested us to remove—to shift some of the cargo inasmuch as there is some smoldering back underneath deep and he wanted to be certain that all the fire was out before they left the ship. [109]

Q. I see.

A. He wanted to make absolutely certain.

Q. So then the bare area of the decking, you might say, in the lower hold, had been covered with—— (interrupted).

A. It had been thrown in that area.

Q. Into that area?

A. To uncover—— (interrupted).

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

Q. Other cargo? A. —deeper cargo.

Q. I see. Now, what specifically did the cargo in Number 5 consist of?

A. Consisted of bales of burlap bags.

Q. Were these new or used bags, do you know?

A. I could not say.

Q. And these as I recall were on the lower tier or two tiers?

A. That is correct. They were covered by other cargo.

Q. And the other cargo consisted of what?

A. There were a few crates of some type of machinery—small crates. There were some cartons of paper, classified as building paper. I imagine that is what we refer to it as—building paper—various colored paper in various dimensions and sizes and some general cargo or which I have no specific record as to just what it was.

Q. There were rolls of paper there?

A. That's right, that we had loaded at [110] Longview.

Q. What was the next time that you saw the Junior Third Mate on watch, after the initial time of reporting to him of the fire? If you did see him?

A. Well, things were pretty confused. I couldn't say exactly, sir. I know I talked to him several times during the course of the evening. During the fighting of the fire, I bumped into him in—being back there on deck, back aft and— (interrupted).

Q. Now— (interrupted).

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

A. —on the main deck.

Q. —from what you observed with this combatting—was this combatting of the fire accomplished solely by the Portland Fire Department or was the ship's personnel engaged in combatting the fire also?

A. Initially, the ship's personnel was engaged.

Q. Initially, you mean before the Fire Department arrived? A. That's right.

Q. In what respect?

A. They had run hoses back to number 5 lower hold.

Q. On port or starboard or both?

A. I could not say definitely. I know that—
(interrupted).

Q. Well, can you recall whether it was the off-shore side or the pier side?

A. I know for sure one hose appeared to be on the port side. Other than that, I couldn't say. [111]

Q. And did you at any time observe water emitting from the ship's hoses? A. I did not.

Q. So when you speak of the action which was initiated by the ship's force, you speak strictly of laying out the hose? A. That's right.

Q. Was there any other ship's action taken that you observed, such as bringing any extinguishers to the scene or the forming of a bucket brigade—any action along that line?

A. No, sir; I did not see any action.

Q. Can you estimate for me approximately how

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

long between the time that the fire first broke out as you saw it and the time that the Fire Department actually had water at the scene—in other words, when the first water was placed into the hold? If you can? I am trying to get an estimate.

A. I can't say; I can't.

Q. Can you estimate for me? I mean, would it have been as much as twenty minutes?

A. I would say ten to fifteen minutes.

Q. Ten to fifteen minutes?

A. To my knowledge. I can recall now, going back to an earlier question, that definitely seeing a ship's fire extinguisher on deck at number 5.

Q. You did see—— (interrupted).

A. I definitely saw—— (interrupted). [112]

Q. ——an extinguisher?

A. ——a fire extinguisher at number 5 hatch.

Q. What kind of an extinguisher, do you recall that? Was it CO₂ or pyrene? Soda acid?

A. I am not too familiar with ship's equipment so I couldn't say. I know there is a red painted fire extinguisher and I believe it had a number three on it. I am not too certain now.

Q. Did you witness any of the men in the number 5 hold, such as the welders, when they came out of the hold—did you see them come out?

A. At what time? At any time?

Q. At any time after the fire first broke out.

A. I saw one man come out.

Q. Do you know who that was?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

A. I don't know who that was.

Q. Did you observe him to do anything or did you just see him come out and leave the area?

A. I saw him climb out.

Q. Now, as I understand it, when you were looking over the hatch, you actually saw the spark fly—— (interrupted). A. That's right.

Q. ——from this welding equipment? Did you immediately depart the area or did you wait to see whether any flames developed?

A. I immediately departed. [113]

Q. You did right away?

A. (Affirmative nod.)

Q. So you don't know for sure or didn't know at that time for sure whether the spark had actually ignited the cargo to any degree?

A. No, I could not say that—— (interrupted).

Q. Did, at this time, anyone of the group below—the welders call up and say anything? Did they call out "fire"?

A. Yes, they did. Somebody hollered "fire."

Q. Somebody in the hold?

A. Somebody in the hold hollered "fire."

Q. Now, did you state that at this time you have no estimate of the damage involved?

A. I have no estimate myself.

Q. Are you now—disregarding estimate insofar as costs are involved, do you have any knowledge or information relative to the extent of damage in-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

sofar as the tonnage or quantity of cargo is concerned?

A. How much tonnage of cargo was affected?

Q. Yes, by either water or fire.

A. Yes; I have an estimate.

Q. And what are those estimates?

A. It would be approximately four hundred tons of wrapping paper; seventy tons of general cargo, I'd say.

Q. And the general cargo would include the construction paper [114] and burlap sacks and so on?

A. Cartons of candy, cartons of cocoa syrup in number 4.

Q. Was there also water damage in number 4 to the cargo? A. Yes; there was.

Q. Now, can you recall whether or not number 4 hatch was covered at the time that you first observed the start of the fire?

A. Number 4 hatch was covered.

Q. It was covered? A. Yes.

Q. Did you notice who uncovered it? In other words, was it the ship's force or the Fire Department? A. I did not notice.

Q. And number 5, I believe you stated earlier, was partially uncovered, is that right?

A. Yes.

Q. How much of an opening would you say—was it the forward half of number 5 hatch was opened or (interrupted)——

A. The aft half of number 5 hatch was open.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

Q. Oh, the after—the after half?

A. (Affirmative nod.)

Q. Do you happen to know who delivered the welding apparatus that was on the pier?

A. You mean by person or company or?

Q. Company, person—in either event, who actually made the [115] delivery or arranged for the delivery. Was it you? A. No; not me.

Q. It wasn't you?

A. It's not my responsibility.

Q. I see. You had nothing to do with it?

A. I had nothing to do with it.

Q. Now, again disregarding estimate insofar as costs are concerned and realizing, of course, that you haven't had opportunity to observe the entire extent of the lower level of number 5, since the cargo, as I understand, has not been completely discharged from that area yet, but in your examination yesterday, did you observe any structural damage yourself in number 5? A. Yes; I did.

Q. What did you see?

A. Metal bulkheads which had been affected by fire, burnt paint, some buckling or seemed to be warping; some sweat battens were burned and some smoke damage.

Q. This buckling, did it appear over a large area or to a rather relatively limited?

A. It was what I would call a limited area.

Q. And was this to the bulkhead separating number 4 and number 5?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

A. That's right. Also the centerline bulkhead, running fore and aft.

Lt. Cmdr. Mason: I have no further questions at this time [116] specifically, Mr. Radovich. Is there anything that you feel you would care to add that would be pertinent to this investigation—anything at all that you might care to say?

A. No; not at this time.

Q. With respect to the fire extinguisher which you stated you saw at the scene, was this observed by you before or after the fire had started?

A. After the fire had started.

Q. And in relation to the hatch being partially opened, was the forward part covered by a tarpaulin and hatch covers or just what was the covering?

A. It was covered by hatch pontoons and tarpaulins—the forward part.

Q. And then realizing, of course, that you are a considerable distance above the workmen in the lower hold when you observed the spark, are you able to determine whether that spark appeared to fall to the deck or shoot in an upward direction?

A. Well, I choose to say that it went—well, I really couldn't say—I really couldn't say.

Q. Well, let me ask you this—have you seen electric welding performed before? A. Yes.

Q. And isn't it your experience that electric welding that—does develop considerable spark that fly out—that seem to fly out in all—seem to fly out considerably in all directions? [117]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Stanley M. Radovich.)

A. Well, not necessarily.

Q. Well, Mr. Radovich, what I am trying to make clear here for the purpose of the investigation is, you stated that you saw the sparks (interrupted)—

A. Right.

Q. —and then without any further delay, you immediately rushed to find the mate on watch to notify him of a possible fire. Well, you must have seen more than just a mere contact of an electrode which threw a couple of sparks, and yet you stated that you saw no flame?

A. Well, I saw the spark. Now, whether it went up or down or straight ahead, I don't know—I couldn't say, but I definitely saw a spark. To my recollection it tended to arc, like this (indicating).

Q. I see. And you knew that welding was going to be performed then, is that correct?

A. Yes, sir.

Q. But this spark gave you the impression that a fire was imminent?

A. No; I only reacted when I heard this man holler "fire."

Q. I see. In other words, you left the scene after someone called "fire" then and proceeded up to notify the mate?

A. Right.

Q. It was actually the call of fire that prompted you to take that action? [118]

A. Right.

Q. Now, I understand. Was it dark down there?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Stanley M. Radovich.)

A. It was not absolutely dark, but it wasn't—it wasn't daylight by any means.

Q. Were there any artificial lights—lighting down there? Were any of the ship's lights on, do you recall? A. I can't recall.

Q. Were you able to observe the scene fairly clearly yourself? A. Fairly clear, yes, sir.

Q. Did you notice any partitions up around the area where the welding work was to be performed?

A. I saw what appeared to be a plywood board to the right of the ladder as you are facing forward. That's about the extent of it.

Q. That was the only partition that you observed?

A. That's the only thing I observed.

Q. Do you have anything further you would care to add at this time? A. No.

Lt. Cmdr. Mason: Thank you, very much, Mr. Radovich.

(Witness excused.)

B. Z. PROTIC

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows: [119]

Examined

By Lt. Cmdr. Mason:

Q. What is your name and address, sir?

A. My name is Branislav Protic.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. And that is spelled P-r-o-t-i-c, is that correct, sir? A. That is correct.

Q. And what is your address, Mr. Protic?

A. My address is 98-30 Sixty-seventh Avenue, Forest Hills 74, New York.

Q. And you are a licensed officer in the Merchant Marine, is that correct, sir?

A. Yes, sir.

Q. And am I correct in assuming that your license number is 228012 as indicated on the ship's crew list?

A. It must be there. I don't recollect the number exactly, but it must be correct here.

Q. How long have you held a license in the Merchant Marine, Mr. Protic?

A. In the United States Merchant Marine, I hold a license from September, 1956.

Q. I see, and did you sail in the Merchant Marine of another country prior to that?

A. Yes; I sailed in the Merchant Marine of my original country, Yugoslavia.

Q. Yugoslavia?

A. Yugoslavia on a Master's license. [120]

Q. I see, and how long have you been seafaring altogether, Mr. Protic?

A. Since 1927—that's thirty-one years.

Q. What license do you presently hold now in the United States Merchant Marine?

A. Master's license.

Q. That's unlimited license, is it? Any tonnage,

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

any ocean? A. Unlimited Master's license.

Q. I see, and how long—are you presently employed by the Luckenbach firm? A. Yes, sir.

Q. And, as I understand, you are presently serving as Junior Third Mate on board the S.S. Robert Luckenbach? A. That's correct.

Q. How long have you been serving aboard that vessel? A. Since July 23, 1957.

Q. I see, and were you on an American merchant ship prior to that?

A. Yes, sir; I was with Lindberg-Rothschild Company of New York as Chief Officer; and I was sailing also with a subsidiary of United Fruit for seven years, which about five years as Chief Officer.

Q. I see. Now, as I understand it, you were the watch officer on the Robert Luckenbach on the evening of 2 April when the vessel sustained a fire casualty while moored to the Luckenbach [121] Terminals in Portland, is that correct?

A. That's right, sir.

Q. When did you first go on watch?

A. I went on watch at 4:00 o'clock in the afternoon—sixteen p.m.

Q. Who did you relieve at this time?

A. I didn't relieve anybody, because the Second Mate and the Chief Mate had the watch until 5:00 o'clock and then mine started at 4:00 going to 12:00, so that means that I relieve them at 5:00 o'clock.

Q. I see. So you actually went on watch at 4:00 (interrupted)— A. 4:00 o'clock.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. —but you didn't relieve as watch officer until 5:00 when the Chief and Second Mates went off?
A. Well, that's correct.

Q. Now, when you first went on watch at 4:00 o'clock, was there any activity going on about the ship?
A. Yes, sir.

Q. What was (interrupted)——

A. We had—we had discharging operations in all hatches.

Q. And longshoremen were aboard handling that?

A. The longshoremen were aboard ship, that is correct.

Q. Were there any repairs being effected that you know of?
A. No, sir. [122]

Q. No repairs? And at 5:00 o'clock then, the Chief and Second Mates went off watch?

A. Yes.

Q. Did they give you any instructions at this time?

A. Just routine instructions for the safety of the ship.

Q. What specifically were you told?

A. Nothing specifically was I told at that time.

Q. Didn't the Chief Mate contact you and say that he was going off watch?
A. No.

Q. He did not? Did the Second Mate contact and tell you that he (interrupted)——

A. I contacted the Second Mate at 4:00 o'clock and he gave me all the information what was going

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

on in the hatches and I was going around the hatches, and at 5:00 o'clock, the Second Mate ceased to be on watch, so I stood the watch and continued with what was going on.

Q. Now, when the Second Mate gave you the information at 4:00 o'clock, did he give you any information other than the fact that off loading was being accomplished? A. No, sir.

Q. And what particular holds were being worked at this time?

A. All the holds—numbers one, two, three, four, five.

Q. All of them? A. All of them. [123]

Q. And was it off loading from all of them or was there on loading also?

A. No; there was discharging everywhere.

Q. Discharging everywhere? A. Yes.

Q. Now, what was the condition of the lighting system at the time, were you on ship's power, do you know? A. Yes; we were a live ship.

Q. And then how about the fire system?

A. As far as I was concerned, we were a live ship, so the fact (interrupted)—

Q. So that all of the facilities were available for operation on the ship?

A. They were available, yes.

Q. Now, when did you first receive any information that a possible fire might be present aboard?

A. I received the information at 1815, was what I put in the log book after—immediately after

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

everything happened. At that time, I had just finished because the longshoremen left something before 6:00—around 1755, and I went as a routine inspection around the decks, checking lines, checking lights and holds, checking if the cluster lights are around and putting on lights—checking the lights and took the name of the gangway watchman so as to put his name in the log book and then I went out to (interrupted)— [124]

Q. Just a minute. When you speak of the gangway watchman, was this a Burns Detective man?

A. Yes; I think so.

Q. I see.

A. His name is Johanson (phonetic). And I went out to read the draft and when all of it was finished, I went to my room to put all those drafts in the log book, and I just started to writing the log book, in fact it was the first word I put down, Mr. Radovich came to my room and he said, "We have a fire in number 5." Something—that is not exactly his words, but I understood there was fire in number 5. So I jumped right away from my room—number 5 came to my mind—we have in number 5, we have bales of burlap, paper. It was a matter of—if the fire was small, a matter of a soda acid fire extinguisher. I jumped down the ladder. The first available soda acid fire extinguisher nearest the spot was on the portside of the entrance to the crew's quarters, aft. I took the fire extin-

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

guisher from the place there. When I arrived at the spot, there was nobody there.

Q. At number 5 hatch, you mean?

A. Number 5 hatch.

Q. There was nobody there?

A. Nobody there. So I (interrupted)—

Q. Did you look into the hatch?

A. I looked into the hatch. There was very big smoke coming [125] out. I didn't see anybody in, so, as I was alone on deck, I was unable to lower that fire extinguisher. The only thing was to give the general alarm, to get some men on deck. So I jumped on the bridge and gave the general alarm. At that time, the automatic general alarm, the smoke-detecting system, went off, too. So I really had two alarms and then I came back and at that time, when I came back, I saw Mr. Kand, who was the Third Mate. He told me he heard the alarm and (interrupted)—

Q. Where was he on deck? Whereabouts?

A. Near number 5. He was undressed.

Q. Near number 5—I see.

A. He was completely in his pants and just his shoes on. And I saw a man standing near him which at that time I didn't know who it was. I supposed it was one of the welders that was inside.

Q. You supposed it was what?

A. I think it was one of the welders (interrupted)—

Q. One of the welders, I see.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

A. —or one man which—whom I have never seen before, and I went into the masthouse and stopped the ventilation. At that time, several members of the crew were out, including the Bos'n, and they were stretching the hoses.

Q. They were stretching the hoses?

A. Stretching the hoses. Kand and me, we took care of the after hose, which is on the entrance to the lazarette, and the [126] Bos'n and the crew stretched the hose from the masthouse, which is forward of the hatch and at the same time, Kand gave the orders to bring some additional sections of hoses, to double from the house, so that we have four hoses. At that time, Kand told me that somebody was in the hold yet, and through that smoke, then we started looking for the man in the hold.

Q. Well, did you call down for him, did you?

A. We called down—no answer. And then there was again one man whom I don't know who he was, and he said there was somebody there, so opened the main hold, calling—everybody was calling—no answer.

Q. Now, when you rigged the hose, you stated that you assisted to lead out one of those?

A. Lead out the hose aft of number 5.

Q. Would the hose from the hydrant forward of number 5 already into the hold?

A. I didn't see, but I think that the—that it is natural that the hose of number 5—aft of what we

(Testimony of B. Z. Protic.)

were rigging was first in, because the other one is farther and would have to go all around.

Q. Now, did you direct anyone to notify the engine room for pressure on deck, or would that have been automatic?

A. That should be automatic because the alarm was given and also the fire-detecting system gave the alarm which was ringing in the engine room, which means water on deck. [127]

Q. I see. All right, now, what happened after you rigged the hoses?

A. Now we lost some time in trying to get that man out in the hold. I don't know—two, three minutes, maybe, passed by—then I noticed there was no water in the hold, because I couldn't play the jet on if somebody was in the hold. And Kand said the men was out. Right now, we open the valves—no water. There is a telephone right there on the poop deck. I called the engine room and I said, "There is no water on deck." They said, "The pump is running full speed; the water is coming."

Q. Do you know who you spoke with?

A. Third Assistant—Junior Third Engineer.

Q. The Junior Third Engineer?

A. I recognized his voice.

Q. Was he the watch engineer at the time, do you know? A. Yes, sir.

Q. The Junior Third Assistant Engineer?

A. Yes, sir.

Q. And he said that the water is coming?

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

A. "The water is coming; the pump is running."

Q. And what happened after that? Did you ever get the water?

A. Not at that time; then the firemen arrived.

Q. Then the firemen arrived. All right, and what happened then? [128]

A. Then when the firemen arrived the Fire Chief, Mr. Post, was in charge. He came right there on deck and they had the hoses as I can see—the whole time, as I reconstructed it later and I put in the log book—since I first was notified about the fire and the first hoses seen with the jets, eight minutes.

Q. Eight minutes for the—for the water to the scene from (interrupted)—

A. Eight minutes, the first jets were in.

Q. Eight minutes from what? From the time the Fire Department arrived?

A. Mr. Radovich notified me.

Q. I see, in other words, at—a total of eight minutes from the time you received the notification to the time that the Fire Department had water (interrupted)—

A. Had water in the holds and (interrupted)—

Q. —in the hold.

A. —they also sent right away two or three men with those oxygen apparatus there inside the hold to look at the fire.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. I see. Now, did you ever get water on the ship's hose? A. I didn't.

Q. Was the—were the valves at the hydrants left in the open position so that (interrupted)——

A. The valves were opened.

Q. But water never did reach the hydrants?

A. I didn't notice.

Q. Were men standing by—crew men standing by the ship's hoses?

A. Yes; yes. We had—I think altogether, of all departments, we had about ten or fifteen men there. I know several of the names, about five or six, but I don't know the others, because I had no time.

Q. In all, how many ship's hoses were rigged to the (interrupted)——

A. Two were inside and the two were being rigged from the—because we had to double them. The distance is pretty big from the house so there is a total of four hoses there.

Q. I see. And to your knowledge, no water ever came out of those ship's hoses?

A. I didn't notice any.

Q. Now, you didn't at any later time notify the engine room to secure the fire pump, did you?

A. No, sir.

Q. Now, were you notified at any time that welding repairs were to be accomplished on board the ship? A. No, sir.

Q. You were never notified of this?

A. No.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. Were you aware of the fact that welding repairs would be accomplished? [130]

A. No; I never knew.

Q. Did you at any time see the men or equipment come aboard? A. No, sir.

Q. And your first knowledge of the fire was when Mr. Radovich notified you?

A. Mr. Radovich, yes.

Q. And that was at 8:15—1815?

A. 6:15, that's correct.

Q. Yes. Was that accurate? In other words, had you observed it on the clock?

A. Maybe one minute on or off.

Q. But very close?

A. Very close and I put that time in the log book.

Q. Of 1815? A. 1815, yes.

Q. Now, the alarm was sounded and hoses rigged, ventilation was secured, as you stated, and—did you notify Mr. Radovich to call the Fire Department or did (interrupted)—

A. No; it was my understanding—I don't recollect whether he told me, but I was under the impression when I went on the bridge that Radovich was going to call the Fire Department at the same time and that's what exactly happened. Now, how it came to my mind, I think that he must have told me, "I'm going to call the Fire Department."

Q. I see. At the time that you were notified of the fire, [131] what were the conditions of the

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

hatches? Were they all opened—all five hatches opened? A. Partly—in part.

Q. In part?

A. And they have tents on them.

Q. And how about number 5 specifically?

A. Number 5 had three pontoons aft off.

Q. And that was at the after end, was it not?

A. Aft.

Q. And you say it was eight minutes from the time you first received the notification (interrupted)—

A. Eight minutes (interrupted)—

Q. —which would be (interrupted)—

A. —because when the firemen arrived, then I looked at the watch.

Q. And that would be?

A. That was 1823.

Q. 1823? A. 23, the first hoses are in.

Q. Now, who else besides yourself, if anyone, was on watch at the time that you had your watch?

A. Nobody, sir.

Q. No one else? There was an engineer, of course?

A. An engineer in the engine room, yes.

Q. On deck, there was no one other than the (interrupted)— [132] A. The gangway man.

Q. —gangway man, who was a Burns Detective man? A. That's correct.

Q. He wasn't a crewman in either event?

A. No.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. Now, did you at any time ascertain for yourself what caused this fire?

A. At the time, when the fire came, before—for awhile I didn't know how the fire came at all. It was only after a few minutes that I learned that—when Mr. Kand was on deck at that time known that there was welding. The fire was caused by the welding.

Q. Who was on deck?

A. The Third Mate.

Q. Did he tell you?

A. He told me because he came right away after the alarm and he saw that man on deck there. So he got the information.

Q. Now, after the fire department arrived and had water to the scene as you have stated, what did you do then?

A. I was watching what they were doing, because it was more or less the whole technical work was out of my hands. I went to check what I could—to check the bulkhead of between number 4 and number 5, because I was suspecting if the fire was near that the bulkhead is going to get warm. So I contacted the Chief—Fire Chief, Mr. Post, and I told him that we should [133] check that and he agreed. As a matter of fact, he had already one force coming out. It was a simultaneous decision somehow, and he opened the manhole between number—leading into number 4 and led the hose through, and he had the men posted there down to watch, and the men came back the first time,

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

came out, and he told me, "Not warm yet; just lukewarm." Mr. Post told him that he is to maintain a constant watch there, and that man was in with his apparatus and the hose was led in, cooling the bulkhead. So, after awhile—it was about—it was about 1840, the ship's crew, we opened the pontoons forward of that hatch, so that we can see from outside what it is that started smoking, the paint inside of the hatch number 4 started peeling off and the smoke was thick, so we couldn't have done any more to watch at that spot there. So we opened, the crew, the pontoons forward and they let some hoses into it and the fire broke there about, I think, eighteen something—6:40 or something like that. I put that in the log book, but I can't recollect. And that fire was under control after ten minutes. And we then have to concentrate a watch there.

Q. And then at what time was the fire reported out, can you recall?

A. Reported out completely, it was late in the night. It was—just finished after my watch because after the fire was under control, they were just now looking for smoldering places behind, at that time was after 7:00 o'clock. [134]

Q. In (interrupted)—

A. In the hold number 5.

Q. Seven o'clock?

A. About—I think it was 1945.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. Approximately an hour after the (interrupted)—

A. All the smoke was out, the men could go in and we knew that there was still smoldering between the bulkhead and the cargo which was adjacent to it, so they had to dig out the cargo in order to find those nests down and that operation terminated after my watch.

Q. And was a fire watch maintained after the fire was reported out, do you know?

A. In which instance?

Q. Well, was any one of the ship's force assigned to the fire watch to (interrupted)—

A. There was the mate—Mr. Kand was there.

Q. I see. And alone? Was there anyone else on watch with him, do you know?

A. I don't know if there was or not.

Q. Now, as I understand it, at no time did the Chief Mate report to you that welding was to occur during your watch on board the ship?

A. No, sir.

Q. You were not, at any time, up to the time the fire started, aware that there would be welding operations? [135]

A. No, sir.

Q. Did you attempt to ascertain at any time later, after the arrival of the Fire Department, why you had not obtained water at the ship's hydrants?

A. I was interested in it, but I couldn't obtain any information. I don't know.

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

Q. Did you ask anyone as to why you didn't get water?

A. No; I was talking with Mr. Kand and I understand there was some repair, I don't know.

Q. But you, yourself, didn't inquire (interrupted)—

A. No; I didn't inquire because it was not my business. The only thing, the Second—the First Assistant, he came on watch, when he came around 7:00 o'clock, I told him we had no water. It was already the fire was out.

Q. You told him you had had no water?

A. That I had no water.

Q. And did he say anything?

A. He said, "We had something working on the pump."

Q. Something to the effect that they had been working on the pump? A. Yes.

Q. You are not sure just what it was?

A. No, sir.

Q. Now, do you have anything else, Mr. Protic, that you would care to add at this time, that you feel might be pertinent [136] to this investigation, that hasn't been already brought out by the questions?

A. No, sir; I think this is everything.

Lt. Cmdr. Mason: I have no further questions, then; thank you very much, sir.

Mr. Krause: Might I suggest one, Commander? He estimated how long it took them to get water

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

on it after the firemen arrived, but how long did it take them to get their own hoses laid out in position so that they could have had water on the fire?

Q. Let's get that in as an additional question. Just one more question, Mr. Protic: Approximately how long from the time that the fire was first reported to you (interrupted)—

A. Yes.

Q. —was it until you had your own hoses laid out?

A. When the fire was first reported to me until the hoses were laid out—might be at the most three minutes.

Q. At the most three minutes?

A. Three minutes the hoses were in place.

Q. And, as I understand it, you stated that you believed that when you had these rigged that you found one hose was already leading from the forward hydrant down into the hold?

A. Not already.

Q. Oh, it was not already?

A. No, not already. And when I came back, I found Mr. Kand [137] on deck and the crew started to arrive, so Kand and myself were putting the extinguishers near the hold, going to the bridge, ringing the alarm, I heard the—the deal going on in the engine room, coming back, I saw Mr. Kand and we grabbed the hose, at the most, three minutes.

Q. At the most, three minutes?

Respondent's Exhibit No. 23—(Continued)

(Testimony of B. Z. Protic.)

A. Three minutes and the other hose followed very closely. We had both of them right in. Now, for the next ones, we had to bring some additions. I think those two hoses were two minutes later on.

Lt. Cmdr. Mason: All right, thank you, very much.

Mr. Wood: Commander, there is just one question we want to suggest.

Mr. Winterling: I wonder if you could ask him how long it was from the time the last shipyard worker was out of the hold. I think he said there was a man still in there at one time, when they all appeared on deck and were dragging these hoses. I think he said that there was a man still in there.

A. That's correct.

Mr. Winterling: I want to know how long it was from the time that that man was finally out until the Fire Department appeared on the scene with water (interrupted)——

A. That man was out (interrupted)——

Lt. Cmdr. Mason: Wait just a minute now. I still don't follow your point here. What is it—what is it you are trying to [138] establish?

Mr. Winterling: I am trying to establish that after the hoses were rigged, and they were ready for water, that there was a shipyard worker still in the hold, and, as I understand it, it took quite some time to get them out, and, as I understand, he might have been overcome with smoke and what not. He was fairly groggy when he arrived on deck;

Respondent's Exhibit No. 23—(Continued)
(Testimony of B. Z. Protic.)

and I was just wondering from the time that he finally left the hold—the time element and the time that he actually cleared the hold and the Fire Department arrived, what that time element was.

Lt. Cmdr. Mason: From the time that the man left the hold to the time that the Fire Department arrived?

Mr. Winterling: With the water. In other words, what I meant was, if they had the water available—I naturally know there wasn't any water—if they had the water available, would they have been able to use it immediately anyway, with that man in the hold?

Lt. Cmdr. Mason: Well, now, of course, before we ask that question, we should bring up: You weren't here yesterday?

Mr. Winterling: Right.

Lt. Cmdr. Mason: And yesterday, we had testimony indicating that the one man stayed down in the hold with a hose, waiting for water and hollering for water and never got it.

Mr. Winterling: I see.

Lt. Cmdr. Mason: And he is the man. That was Larson, he [139] remained down there until last. Does that answer what you were after anyway?

Mr. Winterling: It does.

Lt. Cmdr. Mason: He was down there with a hose screaming for water.

Mr. Winterling: It does.

Respondent's Exhibit No. 23—(Continued)

Lt. Cmdr. Mason: That's all, sir; thanks, very much.

(Witness excused.)

(Whereupon, a recess was taken from 11:50 o'clock a.m. until 2:05 o'clock p.m., at which time the investigation reconvened.)

Afternoon Session

ANTHONY KAND

was called as a witness by the United States Coast Guard, and, first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. Please state your full name and address, sir.

A. Anthony is first; Kand—K-a-n-d. 458 West 23rd Street, New York City.

Mr. Roberts: Would you spell your name?

A. K-a-n-d.

Mr. Roberts: And your address?

A. 450 West 23rd Street—458.

Mr. Roberts: 458? [140]

A. Yes. West 23rd, New York City.

Q. And, as I understand it, Mr. Kand, you are a licensed engineer in the United States Merchant Marine? A. Licensed mate.

Q. I'm sorry—licensed mate in the United States Merchant Marine, and referring to the crew

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

list for the last voyage of the Robert Luckenbach, I notice that you have License Number 225 587, is that correct, sir? A. Yes.

Q. And you are presently serving as Third Mate on board the S.S. Robert Luckenbach?

A. Yes.

Q. And how long have you been sailing in a licensed capacity, Mr. Kand?

A. Since April, 1943.

Q. And how long have you been going to sea in all?

A. I have been going to sea about thirty-four years.

Q. And how long have you been employed by Luckenbach?

A. I have been employed by Luckenbach since 1937.

Q. And on board the Robert Luckenbach since when? A. Since 1956.

Q. And has that been continuous since '56?

A. That has been continuous except for vacations.

Q. Now, were you on board the Robert Luckenbach on the evening of 2 April, when the fire occurred? [141] A. I was.

Q. When did you first become aware that a fire had occurred?

A. It was shortly after 6:00 o'clock. I can't recall because I was in my room and ready to turn in, listening to the radio, and I heard somebody

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

went by—my door was on the hook, and asked, "Where is Mr. Protic?" So I didn't know who it was. I said, "Mr. Protic must be on deck because he is on duty." About maybe thirty seconds later, somebody else came by and I recognized—it looked like it was Radovich's voice—but I didn't see the man, because my door was cracked only, you know, see? So he says, "Where is Mr. Protic; there is smoke in number 5." That is what I heard. Then when I heard that, I was already undressed, except I had pants on and I was barefooted. I put on my shoes on and I put my cap on and I rushed to the scene of the fire as soon as I could.

Q. Now, when you arrived at the—when you say the scene of the fire, you mean number 5 hold?

A. Number 5, yes.

Q. When you arrived at the hatch, what did you observe?

A. I arrived at the hatch on the portside. I seen smoke was coming out of number 5 hatch and Mr. Radovich was alongside of me. So I hollered down below, I says, "Is anybody down below there?" I says, "There is no smoke; only there is a fire." So I didn't hear nobody answered me the first time. I sing out again as loud as I could, "Is anybody down below [142] there?" He says, "Yes." I says, "There is a fire." He says, "No; this is not fire; this is smoke from weld." I says, "No; this is a fire." You see? And I turned around and I says, "We must notify Fire Department immediately."

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

Then I started shouting down again. Mr. Radovich took that hint and turned around and he went to notify the Fire Department.

Q. What did you do then?

A. What I do then, I was trying to find out—how many men was involved in the hold, but I can't—to me, it looked like somebody was working down in the hold, you see? But I didn't know before I went to the hatch. At the same time I glanced over the hatch, I see Mr. Protic standing there, and I asked Mr. Protic, "Did you sound the fire alarm?" He says, "Yes." "Did you brought a fire extinguisher?" "Yes." So, I hollered again, because already the fire become—the smoke become thick—I couldn't see the other side of the hatch, and I says, "Men, please come out of that hold. It is dangerous now, see?" And at the same time, while I was shouting down into the hold, there was three stevedores, they were removing the hatch tent. The hatch tent was covering, you know, that open hatch—after end of the number 5.

Q. After end of number 5 was open?

A. Was open.

Q. And you say there were stevedores there?

A. Stevedores were just taking off the hatch tent. [143]

Q. Were they aboard? Were they on board?

A. These stevedore bosses, they come from the dock. They were not aboard, but they come when they seen it, you know. So I had no time. My mind

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

was on the fire and I didn't instruct them, anyway, they took the hatch tent off and they broke also the fire, you know—I mean the wire runner when they took that hatch tent down.

Q. Broke out the wire runner?

A. Wire runner, yes. So, by that time, the man come out of the hold, and he was in a daze, you know. He looked to me like he was wobbling when he came out of the hold and (interrupted)——

Q. How many? A. One.

Q. Just one? A. Yes.

Q. And at the time that he came out, was there any fire hose in the hatch?

A. While he was coming out of the hold, I told him, Mr. Protic, I says, "Let's get fire hose"—no, there wasn't fire hose in the hatch.

Q. Not at that time? A. No.

Q. But you had told Mr. Protic to break out the fire hose?

A. "Let's get the fire hose." I get it by the nozzle and [144] Mr. Protic opened the valve, you know, and I stretched the fire hose, you know, alongside of number 5 hatch, portside, and I said, "Ask for water on deck." He answered, "I already asked for water on deck." So I says, "All right." And I was right there and there was no water. I looked around and Boatswain is there, and I says, "Boatswain, go ahead and get the other hose." So I am right there with—the hose was in my hand, there was no water, because I couldn't go down in

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

the hatch any more and there was only Boatswain who was the first—first one—and it must have been about maybe two, three minutes after I arrived, or maybe less, because I forget my wristwatch, you know, in a hurry, you know, and I wanted to rush to the scene of the fire as soon as I could. Now, then I left the fire hose there, to check, you know—rushed to the bridge and then over the pontoons and there was the Deck Maintenance Man Kotig (phonetic), with the other fire hose and then stand by. He says, "What's the matter, no water," he says. "I don't know."

Q. Now, where was he actually situated?

A. Forward end—forward end of the—the other man, Deck Maintenance Man.

Q. Forward end of number 5 hatch?

A. Number 5 hatch.

Q. On port or starboard?

A. Well, he was on the portside, if I can recall, sir. Portside. [145]

Q. Now, let me (interrupted)—

A. Starboard side—starboard side.

Q. Now, let me make sure I have this correct now, Mr. Kand. The hose that you and Mr. Protic led out, was that from the hydrant just forward of number 5?

A. No; that is aft—that was number 11 hydrant.

Q. I see. All right.

A. On the portside.

Q. Now, where was the Deck Maintenance?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

A. Forward end on the (interrupted)——

Q. On the starboard side?

A. On the starboard side.

Q. And did he have a hose led up?

A. He was—yes.

Q. And where did that hose come from? What hydrant?

A. That hydrant come from number 9, forward end of the number 5 hatch.

Q. I see.

(Whereupon, a blank sheet was marked Coast Guard Exhibit 3.)

Q. Now, Mr. Kand, handing you a blank piece of paper which has been marked as Coast Guard Exhibit 3, I will ask that you sketch an outline of the vessel; and now, if you will indicate thereon, the location of the various hatches and the deck-house? A. (Indicating on sheet.)

Q. And if you would number those for me, please—the hatches? [146]

A. (Indicating on sheet.)

Q. Now, if you would indicate thereon, using the letters A, B, C and so on, the location of the hydrants? And I am interested at the present only in those hydrants located on the main deck. Make that the letter A. A. (Lettering on diagram.)

Q. Make this the letter D as in dog. Now, are all of these hydrants located on the main deck—on the weather deck? A. Yes.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

Mr. Wood: Commander, I don't know whether you want the interruption now or later. The Captain here thinks he has misplaced one of those hydrants. If you want him to suggest a correction now, all right; if not, all right.

Lt. Cmdr. Mason: Yes; let's have the suggested correction. What is it?

Mr. Winterling: Mr. Kand, the two there— isn't this D, isn't that right forward of the midshiphouse rather than forward of (interrupted)——

A. Oh, yes, yes, yes, yes, yes, yes, yes. (Indicating on diagram.)

Lt. Cmdr. Mason: Let the record show that the witness has been handed a paper with the sketch outlining a vessel and indicated thereon, the foc'sle and the midshiphouse and five squares representing the cargo holds. This document will be marked as Coast Guard Exhibit 3. The former document will be [147] destroyed. Now, I will ask the witness if he will indicate thereon, the holds by number. You do it all over again. Make a large outline of the vessel and you draw it in.

(Diagram made by witness.)

Q. Now, if you will indicate thereon by the letters A, B, C and so on, on the location of the hydrants. A. (Lettering on diagram.)

Q. Now, referring to the letters which represent the hydrants aboard ship as noted on Coast Guard

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

Exhibit 3, which hydrant was the hose led from that the Deck Maintenance Man was standing by?

A. (Indicating.)

Q. Indicating the letter F?

A. (Affirmative nod.)

Mr. Wood: F?

Q. F. Now, which hydrant was the hose led from that you were standing by?

A. (Indicating.)

Q. Indicating the letter G?

A. That's right.

Q. Do you know whether any hose was led from hydrant E? A. No.

Q. There was none led from hydrant E?

A. No.

Q. Was there a hose on the bulkhead or in a bracket in the [148] vicinity?

A. There was a hose, but I think they took that hose, you know, for an extra hose for the number 5.

Q. I see, as an extension for (interrupted)——

A. As an extension.

Q. From which hydrant?

A. That is what I can't recall. I was too busy. I can't recall, sir.

Q. I see. Now, I believe you stated earlier that the Bos'n assisted in the rigging of the hoses, is that correct?

A. Boatswain didn't assist. We had already hose rigged, and Boatswain come alongside of me, and I told him, I says, "Boatswain, go ahead get other fire alarm—or fire hose."

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

Q. I see. Now, normally, you would have gone on watch at midnight, is that correct?

A. That's right, sir.

Q. Now, after the man came up out of number 5 hold, what did you do next?

A. The fire hose was connected; the engine room was informed for water on deck, and I stood by, just to get water, you know, to shoot at the fire, as quick as I could.

Q. Now, how long did you stand by there?

A. It must have been several minutes, because smoke was very intensive at that time, and waiting for the water and so forth, it turned to my imagination, at first, when I went there, I [149] thought it was the paper, but then, you know, when the smoke was intensive, I know, you know, that it was the general cargo in the lower hold. And I still did not get results from the fire pumps, so I said, "Something must be wrong."

Q. Who did you say that to?

A. I didn't say—there was nobody else. I thought to myself. There was nobody else there. Maybe Protic was on the other side, but smoke was so intensive I couldn't see him. I said, "I am going to check on it," so I rushed over, you know, on the pontoon, stepped on the pontoon, and there was this Kotig with a fire hose. I said, "That's good," I says, "You stand by here and we will get some more men." I rushed on the bridge and sent other general alarm in, grabbed the phone, phoned down

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

into the engine room, and I said, "What is the matter, there is no water on deck?" It must have been about two, three or four minutes, I don't know, because I didn't have no wristwatch. "Why, there is water on deck a long time ago." So I rushed back.

Q. Is that what they told you, that there was water on deck a long time ago?

A. Yes. I don't know who answered me, you see?

Q. I see. A. That's right.

Q. Now, you say when you ran up to the wheelhouse this time, you rang the general alarm? [150]

A. Again.

Q. The fire alarm? A. Yes.

Q. Had anyone arrived before then?

A. Yes, Mr. Protic.

Q. Then when you went back—then when you left the wheelhouse, you went back down to the scene?

A. I went back to the scene, but first, I stepped in the Chief Mate's room. It was in my mind, you know. I know that it was general cargo, but maybe that is some oil, inflammable. I glanced—I know the location of the cargo, and I know, you know, the cargo plan; so I looked, you know—I know exactly what I look for because I am familiar with the cargo plan. There was, what you call jute in the bags and then some construction papers. And I looked, and no, there is no inflammables, so I rushed on the scene and by that time, I heard fire engines coming.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

Q. Somebody called this out, did they?

A. Yes.

Q. Or you heard the fire engines yourself?

A. Yes, and then somebody called my attention again. I don't know this, you know. He says, "The wire runner is broken." That must have been Boat-swain. I says, "That's all right," I says, "We are not interested in the runner now," I says. He thought we wanted to fix up the wire runner and put the [151] pontoons on or something like that. I says, "No," and then the boats or firemen came aboard—shore firemen.

Q. And did they bring hoses aboard with them?

A. Immediately.

Q. And they got their water from where—ashore? A. Ashore and fire boats.

Q. And as I understand, fire boats also came alongside? A. Fireboats came alongside.

Q. Did the fire boats come after the trucks—the fire trucks?

A. I think it was a little later, because I contacted, you know, the fire boat Captain, he asked me about the cargo, so I told him as far as I knew there was no inflammable cargo there. I know we only had jute and so forth, and they says, "Can you show me a manifest?" I says, "Yes, I am going to look in the mate's room," and also a cargo plan. Look in the cargo plan under what they call a cargo key, it is computed in a manifest—what it contains and so forth—I says, "Here it is." Started first,

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

you know, and I said, "No, that's the Los Angeles cargo, that's Portland cargo, and most likely this stuff come aboard in Boston—let's look at the Boston first." And it checked with the same thing that I told him—nature of the cargo.

Q. Now, when you first looked down into the cargo hold, when you first came aft— (interrupted). [152] A. Yes.

Q. —was there so much smoke that you couldn't see anything down there?

A. It was so much smoke I could see faintly the man was standing on the paper and it was so rapid—spreaded so rapid that I couldn't see the man any more.

Q. Could you see any flames?

A. No, I didn't see no flames—no, I didn't see no flames.

Q. Did you know what that man had been doing down there?

A. When I shout down first, "Is anybody down there?" He says, "Yes." I says, "There is a fire." He says, "No, that's smoke from a weld." I says, "No, this is not a welding smoke; this is a fire."

Q. Were you aware that there were to be any welding repairs aboard the ship?

A. I was not.

Q. Were you aware that there was a ladder rung missing from the ladder? In that hold?

A. Yes, I was.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

Q. How did you become aware of this?

A. I was aware because it happened on the previous week discharging cargo out of number 5 lower hold; and I am assigned on the duty as a Third Mate to watch cargo discharging and loading in number 5 and 4 holds; and I know as I make an inspection every morning, and in fact, at about 11:45, I [153] noticed ladder rung was missing.

Q. Now, this was when?

A. That was, I think previous Friday. I can't recall, but I think it was previous Friday.

Q. I see.

A. I made also a stevedore damage report up, went down and looked at the rung and told the carpenter, I said, "Go ahead and put safety rung, maybe somebody got hurt," and it was the fifteenth ladder rung in forward end, leading from shelter deck to lower hold.

Q. And did he put on this temporary ladder rung? A. Yes, sir; he did.

Q. And—— (interrupted).

A. The carpenter, he put the rung on.

Q. And did you report this missing rung to anyone then?

A. I reported it to the Chief Mate and I also made a stevedore damage report.

Q. And that is submitted to who?

A. I submitted that first to one of the stevedore bosses and he signed, and then as soon as I contacted the Captain, you know, he also signed, and

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

then I handed it, on the same day or previous day—I don't know but the mate was present at that time there—I says, "Here is your stevedore damage report." I put it in an envelope, mailed ashore to the marine superintendent in San Pedro, one I delivered to the stevedore boss [154] who was present there and I delivered copies of stevedore damage report to the Chief Mate.

Q. Now, how soon after the fire did you go down into the hold, or did you go down at all?

A. I went down there.

Q. When was that? When was the first time after the fire?

A. That was the first time, after the fire, when I come on duty, on at midnight. One thing— (interrupted).

Q. I see, and—go ahead.

A. One thing I couldn't do it right away, was in my mind, when I come out of my room, I didn't have no clothes to speak of on, you know. You see, I come out with a shirt and the firemen that was putting the water in the hold, they put the water on me first, so I got thoroughly drenched, so I was after fifteen minutes, you know, still operating as much as I could, you know, and the fire, there was various things to do, lift the pontoons off and so forth, so I became chilly, and I went, you know, and took a bath.

Q. Now, when you did go down in the cargo hold after you came on watch at midnight, was the

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

temporary ladder rung that you had had installed a week before, in place then?

A. No, I know this ladder rung was missing, and I instructed Mr. Protic, Junior Third Mate, I says, "I see the ladder rung what we put on in San Pedro is missing." I says, "Be sure, you know, go ahead, yourself, or instruct somebody else, [155] you know to put the ladder rung on there." And I came back in at midnight, I see the ladder rung was there. That was a new one put by Mr. Protic.

Q. It was not the same one that you had installed earlier? A. No, it wasn't, no.

Q. Have you had opportunity since the fire to examine the area of the ladder where that rung is missing, thoroughly?

A. Not immediately after—but after when I am on the midnight watch.

Q. And did you look to see if there was any signs of burning or welding in the—— (interrupted).

A. I couldn't see any signs of welding no, because—— (interrupted).

Q. Have you since checked at any later time to see?

A. No, because I am not expert. I couldn't check it very well.

Q. Now, had you already reached number 5 hatch when the fire alarm was first sounded?

A. Yes.

Q. You had?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

A. Yes. I heard when I come down by number 4 hatch, I heard, you know, fire alarm, and then I didn't hear any more when I come by number 5.

Q. I see, was that pretty much immediately after you arrived at number 5 then? [156]

A. It was—I heard fire alarm before I went to number 5. Just when I was on the way and then I got to number 5, I didn't hear the sound any more.

Q. Now, what was your purpose when you went up in the wheelhouse later to sound the fire alarm again?

A. That was—audible alarm was going continuously, so I was so hurry, I said, "Christ, I see the lights there all right, but what is keeping that fire alarm continuously, but it don't sound," but there was one thing again, and I wanted more men. I didn't see no more than about four, six crew there, see, so I am going to give another blast, and at the same time to inquire, "What's the matter with the pumps, we don't get water?"

Q. I see.

A. Then I came back from there and bounced anybody's door, you know, like from the starboard side, to be sure, you know, we got as much men as we can.

Q. And did you observe many more men arriving at the scene? A. Yes; yes.

Q. And do you recall who they were?

A. I would say there was the Boatswain, Kodig

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

and the other Deck Maintenance Man, and there was two ordinary seamen for sure. I was handling myself, the pontoons—taking the pontoons off so to facilitate the shore firemen better.

Q. I see.

A. There must have been about six or seven or eight men, you [157] know, of the deck force at that time.

Q. Now, at any time, did you observe a fire extinguisher at the scene? A. Yes.

Q. When was that?

A. That was shortly after I arrived, you know, alongside number 5 hatch on the port side. I seen Mr. Protic with the fire extinguisher through the smoke.

Q. I see. Do you know what type of extinguisher that was? A. Soda acid.

Q. Soda acid extinguisher?

A. Yes, because as far as I could see it was soda acid.

Q. When you peered in the Chief Mate's room, checking on cargo, is this what you observed?

A. Yes, cargo plan.

Q. Let the record show that I have handed the witness a profile sketch of a cargo plan for the S.S. Robert Luckenbach, which was handed to this Investigating Officer on board the Luckenbach the day following the fire by the Chief Officer. Now, I wonder, Mr. Kand, if you would describe the sketch

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

now before you, indicating where the cargo was located in number 5 hold?

A. The cargo was located here in the wings of number 5 lower hold, port and starboard.

Q. Port and starboard— (interrupted). [158]

A. Yes. That was in the fire.

Q. Next to the forward bulkhead?

A. Next to the forward bulkhead.

Q. And that cargo was what, sir?

A. That cargo was some paper—construction paper and jute in bales.

Q. I see.

A. Also was in midships, I mean—you know—midships was all general cargo, the majority was paper, mixed—I mean, I don't know how the layers were because I didn't stow that place. It was in the port wings and midships and also maybe some parts of machinery, I can't recall exactly.

Q. And what is the blank area of this sketch which is the lower compartment directly below number 5?

A. Deeps.

Q. That is a deep tank? A. Yes.

Q. To your knowledge, did it contain any liquid?

A. Not to my knowledge, no.

Q. I see. And what is forward of the bulkhead of number 5 hold?

A. Forward bulkhead of number 5 hold is—constituted masthouse on deck.

Q. Well, forward of the bulkhead would be num-

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

ber 4 hold, and what is located therein just forward of that bulkhead—what cargo? [159]

A. It is cocoa, cartons of lamps, candy, Hershey bars.

Q. Now, after the Fire Department arrived at the scene, did you render any further assistance yourself? A. I did.

Q. You did not?

A. I did. I can't recall his name—was Post or something, some short name, Fire Chief. As soon as I see him, I asked him what he wants me to do. They put the hoses there and there was at least twenty or so men aboard and they put the hoses in the hold and he says, "Try to get the hatch pontoons off." I says, "Yes." So I says—the Boatswain was around there, and I said, "Boatswain," I says, "We have got to get the hatch pontoons off immediately." So they had the hoses going into the seat of the fire and they got the hatch under control.

Q. Now, they were removed by the ship's force?

A. Ship's force, yes.

Q. I see, and then after that, did you stay up and about the decks?

A. Yes, I stood up by the decks.

Q. You did? A. Yes.

Q. Did you remain up until it was time for you to go on watch at midnight?

A. No, I didn't remain, but I got shivering. I also took the hatch pontoons off from number 4, so I seen the fire was, you [160] know, in the hands

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

of the firemen. I gave the best possible assistance I could and I also spoke, you know, to the Master of the fire boat. The fire boat was there so he took me up, you know, to the Chief Mate's room and we checked on the cargo plan and on cargo key or computed mainfest, so I become shivering. I was cold, you know, I was drenched wet, you know, see? So I decided, I told Mr. Protic, I said, "Everything is under control now, the fire is going fine," I says, "I feel like maybe I am going to get sick. I am going to take a bath." After maybe about fifteen minutes, I took a hot shower, you know, and I come on deck again, you know, and spoke to Mr. Protic and so forth, and everything is under control now. Nothing I can assist any more.

Q. I see. Now, when you came on watch at midnight, was the fire entirely extinguished at that time?

A. The fire was extinguished except the bales of jute, what they were taken out and loaded on the barge on the starboard side, you could see still, you know, smoldering.

Q. I see.

A. And firemen were working and putting, you know, fire hoses—water hoses on deck on the fire—on the bales, in other words, but still was smoldering and you could see the spark of the fire on a few of them.

Q. And then did you maintain a fire watch at the scene until the following morning? [161]

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

A. I was there at all times; at all times.

Q. I see. Was any action taken through your night watch or morning watch to pump out the number 5 hold of water? Do you know?

A. It was—when the fire was under control, I contacted ship's carpenter and says, "Let's sound the holds." So he come up to me and sounded the cargo holds and there is approximately thirty inches of water, see? So I says, "We will notify the engineer, you know, to pump it out." He says, "They pump it out." And the night I am on the watch, I consulted the Chief Mate as they were pumping out, but I don't see no degrees of water. I went down there and I stick a stick in there and there is still approximately thirty inches of water in number 4 and it looks to me like a little less in number 5; and they were pumping—I met the engineer and I asked him, "Were they pumping," and he says, "Yes," but it seems to be there is nothing decreasing, I says, see. There is nothing increasing, either, so there is no danger, there is no hole in the ship, see?

Q. Now, had the Chief Mate been ashore during this fire? A. Yes; he had been ashore.

Q. And do you know when he came back—was it on your watch?

A. No; it wasn't on my watch. He was aboard already before.

Q. Some time before midnight then, he returned?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Anthony Kand.)

A. Some time before midnight, yes. [162]

Q. Now, is there anything else that you would care to add, Mr. Kand, that might prove pertinent to this investigation, or anything at all you feel you would like to add, that hasn't already been asked?

A. I do not know. I do best possible thing I could; I gave assistance, I tried to get the water, you know, the hoses ready and stand by there, the nozzle was in my hand, couldn't get no water and then when the firemen arrived, you know, I gave best possible assistance, you know, to the Fire Chief.

Q. At any time did you finally get water to the ship's hose? A. No.

Q. You did not. Where is the hose for hydrant G normally stored aboard ship?

A. The hydrant on the hatch is—what they call escape from fire room, you know, it is alongside of there. If I can recall that is (interrupted)——

Q. Escape hatch? A. Yes.

Q. Is it on a bracket?

A. Yes; it is on a bracket on the side.

Q. There is one—specifically now, the hose as located at hydrant F as shown on the exhibit, is the hose that the Deck Maintenance Man had, is that correct?

A. Yes; he was standing by with that hose.

Q. Now, outside of that hose and the hose that you had charge [163] of from hydrant G as indicated on Exhibit 3, was there any other hose that you observed in the area?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

A. Not at that time.

Q. Not at that time?

A. Not at the time.

Q. Is it possible that a hose might have been led from hydrant E and already been into the hold and you did not observe it?

A. Not what I don't know and I didn't see no hose hanging into the hold when I rushed to the scene.

Q. I see.

A. The fire, it was still not too dim, I can't (interrupted)—

Q. Now, let me ask you this: Do you know whether or not the hose from hydrant F, that was in the hands of the Deck Maintenance Man, was led down into the hold before the man in the hold came out?

A. Not that I can recall (interrupted)—

Q. You don't know?

A. —because I went to the portside, see, and I met the Deck Maintenance Man right here (indicating). I went like this (indicating)—I jumped on the pontoons like that, and the smoke was so intensive already I couldn't notice at that time, you see, in this side.

Q. You couldn't notice whether the hose was down in there or not? [164]

A. No; I couldn't—yes, I couldn't; no.

Q. You did state, Mr. Kand, that you were able to make out a man down in the hold?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Anthony Kand.)

A. Yes.

Q. Was it clear enough for you to establish whether or not he had in his hand, when you first saw him, or at any time prior to his leaving the hold, a fire hose?

A. No; I didn't see no fire hose. I seen his face very distinctly. He was a big fellow with a red face, and I said, "What are you doing there?" And he says, "This is no fire," he insisted, "No fire—it was fire from weld." See? "How many men you got there?" He didn't answer me. I was anxious to know how many men was there, you see? He didn't say.

Q. Now, did he come up out of the hold before you left to go up to the wheelhouse?

A. Yes, yes. I stand by with the fire hose maybe two more minutes. He didn't spoke to me, but he looked dazed.

Q. I see.

A. And he went just by me; he didn't stop. Over the gangway he went.

Q. Do you have anything further that you care to add, Mr. Kand? A. No; I haven't.

Lt. Cmdr. Mason: Very well. Thank you, very much.

(Witness excused.) [165]

Respondent's Exhibit No. 23—(Continued)

GEORGE ALBERT HEBERT

was called as a witness by the United States Coast Guard and, first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. Will you state your full name and address, please?

A. George Albert Hebert; 136 Margueritte Avenue, Mill Valley, California.

Q. Now, Mr. Hebert, you are a licensed engineer in the United States Merchant Marine, is that correct, sir? A. I am.

Q. And referring to the crew list for the recent voyage of the Robert Luckenbach, which I have now before me, I notice that your license number is indicated thereon as 199 787—would that be correct, sir? A. That is correct.

Q. And you are presently employed as Chief Engineer on board the Robert Luckenbach?

A. I am.

Q. And how long have you been serving in a licensed capacity in the Merchant Service, sir?

A. Since 1945—October.

Q. And how long employed with the Luckenbach firm? A. Since 1946.

Q. And you have been aboard the Robert Luckenbach for how [166] long?

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

A. Approximately five years.

Q. Have you served all of that time in the capacity of Chief Engineer?

A. No; I haven't. I have served most of the time as First Assistant. I am now relieving the Chief Engineer.

Q. I see. You say you are now relieving the Chief Engineer. Were you the Chief Engineer on the evening of 2 April when the fire casualty occurred?

A. I was.

Q. Had you made this recent voyage with the vessel?

A. I had.

Q. And that was in the capacity then of First Assistant, would that be correct?

A. I went Chief Engineer on, I believe, the 28th or 29th of January.

Q. I see. Now, were you on board on the evening of 2 April, when the fire occurred?

A. I wasn't.

Q. Where were you at that time?

A. I was ashore.

Q. And when had you left?

A. About 5:20, 5:25—between 5:20 and 5:30, I would say.

Q. I see. Had you left any particular instructions with any of your subordinates prior to leaving the vessel? [167]

A. No; I hadn't.

Q. That is, with respect to any repairs or operating instructions?

A. No, sir.

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

Q. And what was the status of the vessel at the time of your departure? Were the engine secured?

A. The engines were secured.

Q. And you were on ship's power?

A. That's correct.

Q. When did you first become aware of the fact that a fire had occurred on board?

A. I returned aboard between 11:30 and 12:00 o'clock, and I seen the fire trucks.

Q. Now, prior to the fire, had you made any arrangements whatsoever, relative to the repairs to be made to the vessel or its machinery?

A. We had certain repairs by the shipyard going on.

Q. And was this the result of jobs submitted by yourself?

A. Yes; outside of the survey of number one generator, which was part of the survey.

Q. I see. Now what, specifically, were the original—particular jobs that you had originated?

A. One was to renew a section of fire line, and the other was to repair hinges on the icebox door.

Q. What was wrong with the section of fire line? [168]

A. It had developed a leak at sea, which I had plugged.

Q. Had this developed just during the recent voyage?

A. Yes—well, no; on our way to San Pedro.

Q. That would be about when?

Respondent's Exhibit No. 23—(Continued)
(Testimony of George Albert Hebert.)

A. I'd say about two weeks.

Q. And you plugged it how?

A. I tapped a hole in the line and threaded it and put in a plug.

Q. I see. Now, is this a four-inch line?

A. I believe it's five inches.

Q. Five inch. And where, specifically, is this line located, and what purpose does it serve?

A. It's located in the engine room, about the same deck as the main deck, and it feeds the main fire line on deck.

Q. In other words, it is, then, a discharge line from the fire pump? A. Yes; it is.

Q. What kind of fire pump do you have?

A. Two centrifugal electric pumps.

Q. And they're both tied into the same main, are they? A. They are.

Q. And the fire main is a single line system then, I take it? A. It is.

Q. With risers throughout the ship to the hydrants? A. That's correct. [169]

Q. Now, does the removal of this particular section of fire line cause the entire fire fighting system to become inoperative or is it still possible to use the system?

A. The entire system would be inoperative.

Q. In other words, neither one of the centrifugal pumps would then be able to furnish water on deck?

A. That is correct.

Q. Now, prior to your going ashore on 2 April,

Respondent's Exhibit No. 23—(Continued)
(Testimony of George Albert Hebert.)

had this line been removed? A. Yes; it had.

Q. Who had removed it?

A. Albina shipyard workers.

Q. I see, and was that under your supervision, or was it strictly under the supervision of the Albina force? A. Albina force.

Q. Were any of your members of the "black gang" present to assist during this job?

A. Yes; the First Assistant—I believe the Second Assistant drained the line for them, so they could remove the line without water.

Q. I see, and do you know approximately what time that line was actually removed?

A. It was in the afternoon, I believe. I'm not too sure actually what time it was.

Q. And was it intended, then, to take that line to the shop [170] in order to fabricate a new one from it? A. That is correct.

Q. To use it for its measurements and so forth?

A. That's correct.

Q. I see. And while it was removed, were there any blanks put into the lines?

A. There were blanks put on the top and the bottom.

Q. I see. Now what, if any, arrangements were made, insofar as water facilities from the dock to replace the absence of the use of the fire pumps?

A. I had made no arrangements, but I was under the impression that after they blanked it off they would connect the shore line to the system,

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

and the blank being on the bottom gave me service—fire protection—in the engine room. That was the purpose of this blank on the bottom of the line.

Q. I see. In other words, you did have water then to an engine room hydrant?

A. That's correct.

Q. But the line being removed and blanked off at the other end prevented water from going top-side?

A. That's correct.

Q. And, ordinarily, when hooking up to shore water facilities, such as when it's a "dead ship," where would this connection be made?

A. On the after end of the house there is a connection—a [171] shore line connection—for the fire main on both sides of the ship.

Q. And would this be fire hose hooked to this connection?

A. No; it's a standard fire hose connection.

Q. I see. So, in other words, it would be a matter of rigging fire hose from the shore hydrant up to that connection?

A. That is correct.

Q. But that is not one of the hydrants, is it?

A. No; it just feeds.

Q. Now, prior to leaving the vessel that afternoon, did you check to see whether or not this hose had been rigged?

A. I did not.

Q. Now, I'd like to have you describe just a little as to just the procedure that you go through in connection with having a repair job done. In other words, you make out a list of the jobs you desire

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

having done in your department, and then submit them to someone?

A. I submit them to the Port Engineer.

Q. And in this case, that would be who?

A. Mr. Sterling.

Q. I see. And then—this was in writing?

A. Yes; it is.

Q. Do you notify anyone else, such as the Master or the Chief Mate?

A. No; I do not. [172]

Q. In other words, your contact is directly with the Port Engineer? A. That's correct.

Q. And, in this particular case, did you submit that request in writing? A. I did.

Q. And did he make any acknowledgement of the fact that the work would be accomplished for you?

A. He did.

Q. Did he state when the work would start?

A. Yes, he did—approximately. He said it would be on April the third, I believe.

Q. In other words, it was actually intended to be started yesterday, rather than the date of the second? A. April the second was the day.

Q. I see. Well, let me put it this way to you. Was it scheduled, according to him, to be started on the day that it actually was started?

A. That's right.

Q. Which was the second of April?

A. That's right.

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

Q. How were the fire pumps themselves? Were they in good working order?

A. They were in good operation. They were passed in recent months by the American Bureau and the Coast Guard on the East [173] Coast.

Q. I see. Now, you have no idea just when that section of line was actually removed?

A. Not in hours, I don't.

Q. But it was some time in the afternoon before you went ashore?

A. Yes, it was.

Q. And did they take it right off the ship?

A. I believe they did.

Q. Has it since been replaced?

A. It has.

Q. When was that done?

A. Yesterday.

Q. Yesterday. Was the vessel in drydock?

A. The vessel is not in drydock.

Q. It's not in drydock; I see. It's still at Luckenbach Terminals. Have you had opportunity or occasion to test the fire system since the installation of it?

A. I tested it myself.

Q. When was that?

A. I would say about four o'clock yesterday afternoon.

Q. And was it in proper working order?

A. It was.

Q. Did you have any welding repairs to be accomplished on the ship? [174]

A. No.

Q. What type of fire fighting system does the—is the vessel equipped with—other than the fire

Respondent's Exhibit No. 23—(Continued)
(Testimony of George Albert Hebert.)

hydrants? A. CO₂ system.

Q. And what type of CO₂ system is this; are you familiar with that?

A. I believe it's a Kidde-Walker.

Q. Kidde-Walker. And what is the extent of the equipment that the vessel has in this connection? In other words, are there separate lines to each of the cargo spaces? A. There are.

Q. And where is the main CO₂ supply?

A. It's on the deck below the main deck, on the port side—the CO₂ room.

Q. I see. Do you know offhand how many bottles and quantity of CO₂?

A. Seventy-six bottles—over seventy-six; around there.

Q. What is the capacity of those bottles?

A. Well, it all depends on the cargo they have in the holds. It's on a chart on each side of the manifold as to how many bottles to use in that certain area, depending on how much cargo there is in the hold.

Q. I see. And was this equipment in good operating order? A. It was.

Q. And does that CO₂ system come under your department for [175] maintenance and repair?

A. It does.

Q. And where are the controls for this system activated from?

A. On the main deck there is a manifold to con-

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

trol the forward part of the ship, and—— (interrupted).

Q. On the main deck, where?

A. On the port side—forward port side.

Q. I see; of the deckhouse?

A. Inside; inside the passageway.

Q. Oh, I see.

A. And it's on the same deck on the starboard side aft, for the after part.

Q. I see. Is there any other place for activating its operation? A. No, they are the only two.

Q. There isn't any, for example, in the pilothouse? A. No, no control in the pilothouse.

Q. Now, I believe you stated that you had no occasion to report the repairs that you were to have accomplished, to anyone other than Mr. Sterling? A. That is correct.

Q. Was the Master or the Chief Mate informed by you of the fact that the fire main system would be placed out of operation during this period?

A. No, it wasn't. [176]

Q. Was anyone other than Mr. Sterling advised that the fire main system would be out of operation for awhile?

A. My First Assistant and Second Assistant.

Q. I see. Do you know, yourself, whether or not they informed anyone in the deck department, such as the Master or Chief Mate, of this?

A. I don't believe they did, sir.

Q. Was it the Albina force that accomplished the

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

installation of the new replacement section of the fire main? A. Yes.

Q. Was this under any ship supervision?

A. No.

Q. Had you been advised as to how long you might expect the fire system to be inoperative during this repair?

A. As far as—to my knowledge, I assumed they would connect that fire line to the dock. I had no idea that we were without fire protection.

Q. No, I believe you may have misunderstood me there. Were you advised as to approximately how long the repair would take, though?

A. How long before they could return the line?

Q. That's right.

A. It would be the next day then.

Q. The following day from the day they removed it? A. That's right. [177]

Q. I see. And as I understand it, this particular job did make the entire fire main system inoperative, with the exception of engineroom space?

A. Section of engineroom space and a couple of smaller stations—inch and a quarter stations on the port side—on the third deck, I believe, inside the passageway.

Q. Now, when you first returned to the vessel, which I believe you stated to be at about midnight— (interrupted).

A. That's correct.

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

Q. Was there any shore connection for water facilities hooked up to the vessel at that time?

A. There was.

Q. There was. And how did you happen to ascertain this, did you observe it, or ask?

A. As I came aboard, I saw the Captain by number five hatch, and his first question to me was "Why didn't they have water on deck?" and I went over and looked and seen that the connection was made, so I went and seen the First Assistant, and I said "Was the connection there, or did you make the connection, or what happened?" and he said he had made the connection when he returned to the vessel after the fire started, about 7:20 or something like that.

Q. In other words, he told you that he, himself, had made the connection about 7:20 or shortly thereafter?

A. That's correct. [178]

Q. Now, whose responsibility is it on board, to see that fire water protection is maintained at all times?

A. I would believe that is my responsibility.

Q. In other words, then, in this particular instance, you feel that it was your responsibility to have assured that there was shore water while that section of pipe was out?

A. I was certain they had made the connection; I did not check it.

Q. Did anyone report to you that they had?

A. No. At the time, we had this number one

Respondent's Exhibit No. 23—(Continued)
(Testimony of George Albert Hebert.)

generator being opened up, and my time was spent checking it.

Q. Have you had any previous experience or reasons for hooking up to shore facilities at Luckenbach Terminal in the past?

A. I don't understand the question.

Q. Have you at any time had to hook up to shore facilities—water facilities—at the Luckenbach Terminal at any previous time?

A. Not that I can recall. Not for fire protection.

Q. I see. I mean, there has been no time while aboard this particular vessel, that you've had to secure the fire main system and use shore facilities at the Luckenbach Terminal?

A. Not at this Luckenbach Terminal.

Q. I see. Are you familiar with what facilities are available to the vessel as far as water is concerned at that [179] terminal? A. Yes, I am.

Q. Are there hydrants available on the pier?

A. There is a hydrant.

Q. There is. Do you happen to know, offhand, what pressure is normally maintained at those hydrants?

A. No, I would judge about fifty pounds; sixty pounds.

Q. Adequate for purposes of a standby system in the event of a shipboard failure? A. Yes.

Q. What I am attempting to determine here, is if, in your opinion, the terminal facility itself, was lacking insofar as equipment available to the ship

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

for fire fighting. Now, I believe you stated that you had submitted no job order which required any welding, is that correct? A. That is correct.

Q. Were you aware of any other job orders submitted by any other department head, that would have required welding? A. No, I wasn't.

Q. Did anyone, such as the Master or Chief Mate indicate to you that welding was going to be performed while in this time—while the vessel was in?

A. I believe they mentioned something about a "Uni-Strut"; he didn't say when he was going to do it.

Q. I see. Did Mr. Sterling mention anything to you relative [180] to welding to be done?

A. No.

Q. What type of fire pumps does the Luckenbach have?

A. Worthington electrical centrifugal pump—two of them.

Q. Worthington electric. Now, when you returned back aboard, what engineer was on watch at that time? A. Mister Elixson.

Q. And he is the—— (interrupted).

A. Junior Third Assistant.

Q. Junior Third Assistant. And you conversed with him almost immediately, did you?

A. No, I did not.

Q. You did not?

A. No, I was concerned—I went down in the engineroom afterwards to see if water they were

Respondent's Exhibit No. 23—(Continued)

(Testimony of George Albert Hebert.)

putting in the after hold was flooding the shaft alley. I observed the bilge pumps were handling it adequately, and I came up again.

Q. I see. Did you talk with Mr. Elixson at all that evening? A. No, I did not.

Q. Did you arrange for further pumping out of number five at a later hour, after you returned to the ship?

A. No, our pumps were handling it adequately, and I would have been informed if they were losing out.

Q. I see. Well now, I was aboard the vessel the day following [181] the fire, and I observed that there was still considerable water in the number five, and I was just wondering whether the pumping was still going on at that time.

A. The next day?

Q. Yes.

A. Yes. It was draining slower, though, because the—evidently the rose boxes were getting— (interrupted).

Q. The strainers were getting clogged?

A. That's correct.

Q. I see. Now, Mr. Hebert, is there anything you would care to add, or anything you feel might be pertinent to this investigation, that I have not already brought out in my questioning of you?

A. No.

Q. Mr. Hebert, to your knowledge, was there any

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

shore connection hooked up to the vessel to furnish water of any type, such as fresh water, to the vessel?

A. That is correct.

Q. There was? A. There was.

Q. What was this connection?

A. This was connected to the line on the dock.

Q. And—the line on the dock furnishing water to what?

A. To the—well, at that time, I believe the First Assistant was filling the forepeak tanks. [182]

Q. This was for the fresh water supply?

A. That is correct.

Q. And would that situation, then, offered adequate pressure on board that a fire hose might have been hooked up to some other connection on the ship? A. I believe so.

Q. Where, for example, might they—might a hose have been rigged?

A. Well, it would have been necessary to put a "Y" on the line.

Q. On what line? A. On the fire line.

Q. I see. You mean take it directly from the shore line, then? A. That's right, yes.

Q. I see. Was there any outlet on board ship where a fire hose might have been hooked up, other than directly by a "Y" to the line coming from ashore? A. That I don't understand.

Q. Well, in other words, is there any outlet from the fresh water tanks, themselves, that you could have hooked up a fire hose to?

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

A. Oh, no; no, there isn't.

Q. There was not? A. No. [183]

Mr. Winterling: Commander, I want to know—I know most of our engineers on our various ships, and I don't think that anyone of them would deliberately leave a vessel in the shape where she didn't have water pressure, and I wonder if you could ascertain from the Chief, for my information only, if he thought the vessel was left without water, and if so, why did he think the vessel was left without pressure, or for what reason didn't he connect up the shore side line.

Q. When you—prior to your leaving—or at the time you were leaving the vessel, were you of the opinion, or were you not of the opinion there was adequate fire protection available to the ship?

A. I was under the opinion that there was adequate fire protection on the ship.

Mr. Wood: Commander, would you ask him how many hydrants and where they were on the dock and whether the hoses they had on the ship could have been attached to those hydrants directly?

Lt. Cmdr. Mason: If the hoses could have been attached to the—— (interrupted).

Mr. Wood: The ship's fire hose to the hydrants on the dock.

Lt. Cmdr. Mason: Before I ask that, though, could I ask what the purpose is there—in other words, if they're going to hook up to a shore hydrant, there will always be adequate hose connec-

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

tions—hoses in lengths—provided to make the connection [184] to the ship, and he has already indicated that there were shipboard connections, so what—I mean, I don't quite get the—what it would add to it.

Mr. Wood: Just a moment ago, the question was suggested, and you asked it, whether you could hook up this fresh water line to the ship's fire line in order to have a water supply in there. Now, there were hydrants on the dock, and the ship's hoses, if they fit, could have been applied directly to those hydrants and—instead of their waiting until the fire department got there.

Lt. Cmdr. Mason: Well, he's pretty much indicated that—that—as a matter of fact, that was the method that he had assumed was being handled by the contractor.

Mr. Wood: You misunderstand me. He had assumed that a fire hose had been connected to a shore hydrant and attached to the ship—to the ship's lines. Now, if that had been the ship's hoses—could have been attached right at the time the fire was discovered, to the shore hydrants, so that the water could have been taken directly from the shore, without running through the ship's lines.

Lt. Cmdr. Mason: I see what you mean. In other words, if they could then, when the fire first broke out, they could have taken ship's hoses down, hooked up to the dock and—— (interrupted).

Mr. Wood: They stood around for at least eight

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

minutes, according to testimony, with no water going on that fire. [185]

Lt. Cmdr. Mason: Well now, wait a minute. Let's be sure we're clear here. I don't recall that anyone "stood around" in the testimony, and secondly, I also recall that none of the witnesses were aware, at the time that the fire broke out, that there would not be water available to them, and they did make all the preparations of hooking up to the hydrant. Are you trying to assume—to state—that they are aware of the fact that there was no water to these hydrants?

Mr. Wood: No water came out of their hoses. This is my recollection of it: It took them about two to three minutes to get the hoses hooked up and the water turned on, if there'd been water in the fire line. No water came out. They called the engineroom and they said there'd be water pretty soon. Well, that same witness said it was five minutes later when the fire department arrived, and during that time no water went on there, and there were hydrants on the dock and they had fire hose on the ship. It does seem that that was a perfectly logical thing for them to do, however, I'm not—(interrupted).

Lt. Cmdr. Mason: All right, but now, what is the question you want directed to the Chief? He isn't aboard at the time of the fire.

Mr. Wood: Whether the Chief knows whether the hydrants were on the dock, where they are

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

located—how close to the scene of the fire—and whether they had hose on the ship [186] that would have fit the hydrants on the dock.

Lt. Cmdr. Mason: I see. Of course, I was going to get the hydrant information from the—from Mr. Sterling, however, we can go through that merely to add to the information, yes.

Q. Mr. Hebert, are you familiar with the hydrants at the terminal where the ship was moored, such as to be able to describe where they were located in relation to the ship itself?

A. There is a hydrant right by the ship's gangway—well, within twenty feet of it, and it's a standard fire connection—two and a half inch fire connection.

Q. And are the hoses aboard the ship two and a half inch hoses? A. That is correct.

Q. I see, and were the couplings such on the ship's hoses that they would fit the hydrant on the dock?

A. That is correct. As I mentioned before, on my return to the vessel, the connection was made from that hydrant to the ship's hydrant. As I said first, this had been changed, and had the connection been in there—because that's the connection—I was under the assumption that it—that the contractor would make—and he told me “No,” that he hadn't made the connection himself.

Q. Now, when you first went ashore, had the fire system already been secured? [187] A. Yes.

(Testimony of George Albert Hebert.)

Respondent's Exhibit No. 23—(Continued)

Q. It had been secured?

A. Yes, it was blanked off before the—prior to—— (interrupted).

Q. And then you went ashore and the hydrant being next to the gangway, did you or did you not observe that there was no hookup at that time?

A. I did not observe it. May I say, sir—by the gangway—our regular gangway—but in this port, the dock is level with the ship's side and we put in an auxiliary gangway, which is removed from that area.

Q. I see. Approximately how much hose would you anticipate would be needed for that connection, or how much was actually used?

A. I believe it was about two lengths of fifty foot hose.

Q. I see. Approximately a hundred feet, then, to span the distance?

A. Yes, sir.

Q. Did you have anything further you wish to add, that hasn't been brought out, Mr. Hebert?

A. No, I haven't, sir.

Lt. Cmdr. Mason: All right, thank you very much, sir.

A. Thank you, very much.

(Witness excused.) [188]

Respondent's Exhibit No. 23—(Continued)

GUNNAR ELIXSON

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. State your full name and address, sir.

A. Gunnar Elixson, 60 14th Street, Hoboken, New Jersey.

Q. And you are presently employed as Junior Third Assistant Engineer on board the SS Robert Luckenbach, is that correct, sir?

A. That's right.

Q. And were you so serving on 2 April, 1958?

A. That's right.

Q. What license do you hold, relative (interrupted)—

A. Chief's license.

Q. Chief Engineer? A. Right.

Q. Steam? A. Steam.

Q. Any diesel endorsements?

A. No diesel.

Q. And, according to the crew list for the last voyage, which I have before me here, your license is indicated as number 213 881, is that correct, sir?

A. I believe it is. [189]

Q. And how long have you been a licensed officer in the Merchant Marine, Mr. Elixson?

A. Since 1940.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

Q. And how long have you been employed by Luckenbach?

A. Since December twenty-seventh of '57.

Q. I see, and has all that time been on board the Robert Luckenbach? A. That's right.

Q. Now, were you on board the vessel on the evening of 2 April, 1958, when the fire occurred?

A. That's right.

Q. What time did you go on watch?

A. About ten minutes to four.

Q. In the afternoon?

A. In the afternoon.

Q. And your watch was to (interrupted)——

A. Four to midnight.

Q. Four to midnight, I see. who did you relieve?

A. I relieved the Second Assistant Engineer; Mr. Porter is his name.

Q. I see. At that time did he give you any instructions with respect to any work going on or any operations that were underway?

A. No, just about the boilers and the taking on water. Q. Fresh water? [190]

A. Fresh water.

Q. Did he inform you as to any repairs being effected to the fire main system? A. No.

Q. Were you aware of any repairs being made to the system? Were there any workmen in the engine room? A. No.

Q. Now, during the period that you were on

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

watch down there, did any workmen come down into the engine room to effect any repairs?

A. There were some working on the generator there—the number one generator.

Q. Now, at any time while you were on watch, did you become aware that the fire main system was inoperative? A. No.

Q. At no time. Did you spend your entire watch in the engine room? A. Yes.

Q. From four to midnight?

A. That's right.

Q. When did you first become aware that a fire was—had occurred?

A. About approximately twenty minutes to seven. That's a rough guess there. The Oiler—well, the fireman told me that the Oiler wanted to see me down by the fire pump, so I [191] went over there and he had the fire pump in operation, with all the necessary valves open and pressure on it. He told me that he was on his way up and one of the shore workers told him there was a fire in number five hold, so he went down to start the fire pump.

Q. Where were you at this time?

A. I was in the engine room some place.

Q. So he went down to start the fire pump?

A. He went down to start the fire pump.

Q. And then after he started the fire pump, did he report further to you?

A. No, he was—well, he was standing over by

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

the fire pump and I went over there and I checked to see that everything was open and pressure on the pump.

Q. And then you received any word from topside that they weren't getting water?

A. I didn't get any calls myself, and then I think I ran up on the deck there and I saw somebody running around who said they hadn't got any pressure, so I went down further and I checked—I said "Everything is all right down below."

Q. What did you do then?

A. Well, I figured probably a hose off on deck or something; they were all okay down below there.

Q. I see, and did you later ascertain that there was a section of the fire main missing? [192]

A. Well, after while, when I—they were still running around, and still getting pressure, so I went up and started checking around and I saw that that section was blanked off, and in the meantime, they had the fire engines down there and firemen on the deck there and—well, they had water down in the hold there.

Q. Where is this section blanked off? Where is it located, actually, in the engineroom?

A. That's below one deck—you know—the main deck level.

Q. Is it situated over the main engine?

A. Over the main engine, yes.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

Q. And, then, would it be midships or port or starboard?

A. It's over the engine room there—well, amidships.

Q. What is that, a five inch line?

A. Well, I couldn't say off-hand; it's all of five inch.

Q. I see. Do you recall an occasion earlier on the ship, where a leak had developed in that particular line?

A. Yes, on the Panama Canal they had a leak in there. They put a plug in it.

Q. Who discovered that leak, if you know?

A. I couldn't say; I wasn't (interrupted)——

Q. It wasn't on your watch?

A. I wasn't down there that time.

Q. You weren't? A. No. [193]

Q. You were still on the ship though?

A. I was on the ship, but I wasn't on watch.

Q. And do you know if any repairs were effected to it?

A. Well, from what I heard—hearsay—they put a plug in it or something; made a temporary repair.

Q. But you didn't know anything or have anything to do with it? A. No.

Q. Were you ever advised by the Chief Engineer or First Assistant, or anyone, that that section would be removed at a later date for replacement or repair? A. No, no.

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

Q. Now, you came up, you say, some time after you were originally asked to get water on system, and found the fire department there. Approximately how long was that after you first received the report to give them water on deck?

A. Well, I couldn't say.

Q. Half an hour?

A. Oh, (interrupted)——

Q. Thirty seconds (interrupted)——

A. Less than that (interposed).

Q. Fifteen minutes?

A. I guess closer to fifteen or twenty minutes.

Q. An estimated fifteen or twenty minutes after you first received a report that they wanted water on deck? [194]

A. Well, I couldn't say, because I wasn't—I just came up there and ran down again—I couldn't say.

Q. Well now, when you checked the fire pump after they first told you there was no water and you found that the pump was running, did the indicator gauge show pressure? A. Yes.

Q. What pressure did that show?

A. About eighty pounds, I guess, on there.

Q. Does that have a by-pass system, where it just circulates within itself?

A. Well, if you get too much pressure, there's a relief valve that relieves the pressure.

Q. That's automatic though, is it not?

A. Yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

Q. Is there any way of knowing when that relief valve actually activates itself—when it works?

A. Well, you can see where it goes down into the bilge, you know.

Q. Now, as far as you recall, there were no workmen in the engine room at all, performing any work on the fire main?

A. Not on the fire main, no.

Q. But they were on the generator?

A. On the generator, that's right.

Q. How many generators aboard?

A. We have three. [195]

Q. Are they main ship's service generators—all three of them, or is one the emergency?

A. No, they are all (interrupted)—

Q. Main ship's generators. And they were working on one, so there was still adequate facilities for the electrical demands?

A. Yes, that's right.

Q. And, then you went off watch at midnight, did you? A. Yes.

Q. What did you do then, turn in?

A. Yes.

Q. Did the Master or the Chief Engineer, upon returning to the ship, contact you?

A. No.

Q. Neither one of them spoke to you when they came back that evening. And then when did you next go on watch?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

A. Well, 4:00 o'clock the next afternoon, the following day.

Q. Now, when you went on watch then, did you check to see if the fire main was in?

A. Yes; the line was in that time, yes.

Q. It was in then? A. Oh, yes.

Q. Were there any workmen working on it, or was the work completed?

A. No; it was all installed; completely [196] installed.

Q. Now, when you went up topside and observed that the fire department was there, the night of the fire, did you notice whether or not any shore line had been hooked up to the fire main?

A. No; I couldn't say—I couldn't say to that. You know, I didn't check.

Q. Now, who was on watch with you in the engine room?

A. There was an Oiler and a Fireman.

Q. Who were they?

A. Well, I couldn't say; I don't know their names.

Q. Would you know, seeing the crew list?

A. Oh, yes. There was the four to eight Oiler and the four to eight Fireman.

Q. Well, you have several Oilers and several Firemen?

A. Well, I don't know their names.

Q. You don't know them by name, huh? But there was one Oiler and one Fireman?

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

A. One Oiler, that's right.

Q. And did this Oiler tell you that they had a fire on deck?

A. Well, he told me that—well, the shore workers told him that they wanted—that there was a fire there—and they wanted the fire pump started, and he didn't say, you know, specifically.

Q. He didn't specify that there was a fire?

A. No; I guess they told him there's a fire, so he went down [197] to start the fire pump.

Q. Have you sailed as a Chief Engineer, Mr. Elixson? A. No; I haven't sailed as that.

Q. What licensed capacities have you sailed?

A. I've sailed as—well, from Third to First Assistant.

Q. Now, ordinarily, in assuming the watch, you assume the responsibility of the operation of the equipment in the engine room, unless you've been advised that certain equipment is not in operation, is that right?

A. Yes; ordinarily, in a case like that, they usually notify that something is being repaired and out of service.

Q. But in this particular case, you received no notification whatsoever? A. No.

Q. The Second Assistant would have had the noon to—what watch would he have, 8:00 to (interrupted)——

A. Eight in the morning to 4:00 in the afternoon.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

Q. And the First Assistant on with him?

A. Well, he's on day work, too.

Q. And you and the Third (interrupted)——

A. The Third comes on from midnight to 8:00 in the morning.

Q. I see. Now you did not, I understand from what you have said so far, engage in fire fighting to any extent in connection with this casualty?

A. No. [198]

Q. Where is your fire station aboard ship?

A. Well, I'm on the CO₂; in charge of the CO₂.

Q. And would that indicate that you were to proceed to that station in the event of fire?

A. Yes, if I'm off watch.

Q. And if you're not off watch, then what?

A. In the engine room.

Q. Stand by the engine room. Did you hear the fire alarm sound?

A. Yes; that was after we got the fire pump started.

Q. You heard the fire alarm sound?

A. Yes; that was ringing.

Q. Approximately how long after you started the fire pump, or after the Oiler started the fire pump up?

A. I guess it was two or three minutes.

Q. And was it after this alarm was sounded that someone from the topside came down to report they weren't getting water?

A. I think one of the Mates—I think that's the

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

time I ran up and I heard someone say they weren't getting any water.

Q. This was about the same time the fire department arrived, is that right, or did you go topside twice?

A. Well, I went up a couple of times; I was trying to find the First Assistant. I knew he was supposed to be aboard there.

Q. Did you find him? [199]

A. Well, he came on later, but at that time I couldn't find him.

Q. I see. Did you assume he was aboard?

A. Yes.

Q. Now, how many times in all did someone from topside repeat to you that they weren't getting water?

A. Well, I didn't hear anything for that matter.

Q. What do you mean, you didn't hear anything?

A. Well, I mean—on the phone you mean?

Q. Well, phone or somebody coming down. How many times was it reported to you that they weren't getting water by anyone from topside, either (interrupted)——

A. Well, that's the time I told you. I went up to the deck level and I heard that somebody around—I think one of the Mates—the Third Mate—said they weren't getting any water pressure, so then I went down and checked again—the fire pump (interrupted)——

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

Q. And then you came back up again, did you?

A. Well, not right away, no.

Q. Well, when did you go back up again; how soon after that?

A. Oh, I don't know; I'd say two or three minutes later—I'm not sure.

Q. And did you ask, then, when you went up, if they were receiving water or getting water?

A. Well, that time, then, they had the fire department there. [200]

Q. Well, I mean, what does that mean? The fire department is there—don't you feel they still might need ship's water?

A. Well, we couldn't do anything about it. At that time, I called—the Third Assistant came out of the room—I came looking for the First Assistant and he heard me calling the First and came out of the room, so he came down, too, and he checked the fire line. That's the time (interrupted)——

Q. The First?

A. No; the Third Assistant.

Q. The Third Assistant?

A. Yeah. So he came down and he started checking the line, and that's the time we discovered it was blanked off there, see?

Q. I see; he found it. And had he indicated to you that he knew anything about it beforehand—that this line was missing?

A. Well, when he mentioned that, then I went up and checked on it, too, and it was blanked off.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

Q. Then I believe you stated earlier that when the Master came back aboard he didn't contact you?

A. No, no.

Q. Or the Chief Engineer? A. No.

Q. Did the Chief Engineer contact you the next day? A. No; he didn't say anything. [201]

Q. He didn't say anything to you. In other words, the Chief Engineer has not discussed this casualty with you at all, as to why—as to the failure to have water on deck at the time of the fire, is that right? A. That's right.

Q. Do you have anything further you'd like to add, Mr. Elixson, that you feel might be pertinent to this investigation that hasn't been brought out by the questioning thus far?

A. Not that I can think of offhand, no.

Q. I believe you stated that the fire system, when you came on watch the next day had already been repaired?

A. Yes; I noticed that, because I made a point of checking that. I went down and checked the fire pump; everything was lined up as it should be.

Lt. Cmdr. Mason: Anybody?

Mr. Roberts: Would you ask him how many times, if he knows, whether the Oiler was contacted by telephone?

Q. Do you know whether the Oiler was contacted on the phone in the engine room?

A. No, no, this shore worker came down. The Oiler was on his way up out of the engine room and

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

this shore worker was on his way down, so he met him someplace halfway between or so. I guess he told him, "They've got a fire back there and they want, you know, water back there," so the Oiler rushed down there and started the fire pump. [202]

Q. Do you know whether the engine room phone was sounded at all? In other words, did anyone call for the engine room on the phone that you know of?

A. Well, myself, I don't know. Down below there, you know, it's hard to say.

Q. Where is that? A. On the upper level.

Q. And you were down in the lower level, is that correct? A. Yes.

Q. Is it such that you wouldn't have heard it down there?

A. Well, ordinarily you can, but you know—those conditions—it's hard to say.

Q. What do you mean by "those conditions"?

A. Well, you know, the excitement, but offhand, I'd say I didn't hear it—the phone ring there.

Q. Do you know whether anyone from topside contacted the Oiler other than that one time you just mentioned—did they contact him again?

A. I couldn't say.

Q. Now, the Oiler was just, as you stated, going topside at the time?

A. Yes; he was on his way up out of the engine room and he met this shore worker coming down.

Q. And then he came back down?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Gunnar Elixson.)

A. He came back down and rushed down and started the fire [203] pump.

Q. Did he report to you before he did it?

A. No; he started it up—that's his station anyway—he usually starts it up at the fire drills, see?

Q. I see.

A. So I was—I guess I was on the boilers and I came around and I met the Fireman, so he says, "The Oiler wants to see you by the fire pump," so at that time the fire pump was running, so he says, well, "They've got a fire in number five hold," so I checked the valves and pressure and everything was okay down there.

Q. I see. Where is the pressure gauge located, in relation to the pumps?

A. It's right alongside the pump there.

Q. Right alongside?

A. On the bulkhead there.

Q. Is it a large dial?

A. Well, it's about four or five inches in diameter or so.

Q. And what was the reading on that?

A. Well, approximately—offhand I'd say about 80 pounds, I guess.

Q. About 80 pounds. What is the normal pressure at a fire drill, for example, when you have to put water to the fire mains?

A. Well, I guess it might be somewhere around there; it [204] might be a little less.

Q. In other words, to your thinking, then, the

Respondent's Exhibit No. 23—(Continued)
(Testimony of Gunnar Elixson.)

80 pounds that you saw registered on the indicator was accurate?

A. Well, I didn't have the—I didn't stay long enough—I saw the pressure was there. There was enough—sufficient—pressure anyway.

Mr. Gryziec: Would you ask him how long he watched the gauge, Commander, to find out if at any time the pressure fell off?

Lt. Cmdr. Mason: Well, he just stated that he took a quick glance at it, and he wasn't there long enough to look that way. Very well, Mr. Elixson, I have nothing further. Thank you, very much, sir.

(Witness excused.)

(Adjourned at 4:20 o'clock p.m., Friday, April 4, 1958.) [205]

Third Day—Morning Session

(The preliminary investigation reconvened at 8:30 o'clock a.m., Monday, April 7, 1958.)

Lt. Cmdr. Mason: For the purposes of the record and identification, the photo copies which I took of the loading plan as received by me from the vessel are marked Coast Guard Exhibits 4 and 5. And Federal Register Reprint, Series Number 30-57, dated 20 December, 1957, is marked as Coast Guard Exhibit 6.

(Documents above referred to were marked Coast Guard Exhibits 4, 5 and 6.)